Report of the Reforms Enquiry Committee

1924

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MINORITY REPORT.

REFORMS ENQUIRY COMMITTEE.

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Note.—The total expenditure incurred by the Committee, including expenditure on printing, will be about Rs. 46,000.

REPORT.

To His Excellency the Governor General in Council.

Your Excellency,

We have the honour to submit, for Your Excellency's consideration, our report on the working of the Reformed Constitution.

2. The terms of reference to us were as follows:—

(1) to enquire into the difficulties arising from, or defects inherent in, the working of the Government of India Act and the Rules thereunder in regard to the Central Government and the Governments of Governors' provinces; and

(2) to investigate the feasibility and desirability of securing remedies for such difficulties or defects, consistent with the structure, policy and purpose of the Act,

(*a*) by action taken under the Act and the Rules, or

(*b*) by such amendments of the Act as appear necessary to rectify any administrative imperfections.

The first clause of these terms of reference is very wide and invites us to consider any difficulties or defects inherent in the working of the Government of India Act and the Rules thereunder. The second clause is on the other hand distinctly restrictive and prevents us from recommending any remedies which are inconsistent with the structure, policy and purpose of the Act, whether such remedies are to be found by action within the scope of the Act or by amendments of the Act itself.

3. We assembled in Simla on the 4th August 1924. Our business was interrupted by the September meetings of the Indian legislature and by the Pujah holidays. We re-assembled again in Simla on the 16th October, holding meetings until the 25th October, and our final meetings were held in Delhi between the 24th November and the 3rd December 1924.

PART I.

EVIDENCE.

4. The Government of India placed before us a Memorandum on the legal and constitutional possibilities of advance within the Government of India Act, a copy of which we have annexed to this report (Appendix No. 2). It will be seen that this Memorandum indicates generally the scope and extent of the recommendations which can be made for action under the Act and the Rules.

5. The Government of India also placed before us reports received from local governments in 1923, containing a survey of the operation of the reformed constitution in the provinces up to that date, and further reports from local governments received in 1924 which continued the survey up to the middle of this year and also dealt specifically with the questions which have been referred to us. These must almost necessarily be read as connected papers with this report, and we consider therefore that it will be unnecessary to insert therein a detailed survey of the operation of the reformed constitution in the provinces up to date. We shall refer later to any specific proposals which have been made in the reports of local governments and in their enclosures. We propose at this stage to summarize briefly the views contained in these reports on certain general considerations.

Atmosphere.

6. The present constitution came into operation at the beginning of 1921. It has thus not yet been in operation for four years. We are required now to report upon its working, but it may be argued that the period for which it has actually been in force is too short to afford sufficient experience for a well founded analysis. Several local governments have referred to this as a difficulty in the way of arriving at conclusions which they say is enhanced by the atmosphere in which the constitution has been worked, which resulted, *inter alia*, in the abstention from any participation in the reforms of a number of leaders of Indian opinion. The Government of Bombay say that the successful working of the Act depends to a large degree upon the spirit in which it is worked by all parties. The education of the electorate has been retarded by the non-co-operation movement. The evil influence of that movement is declining, but it diverted for three years the main stream of political activity from any endeavour to work the new legislative council. The Government of the United Provinces say that the reforms were launched in circumstances of exceptional difficulty. They refer to the causes which led to the non-co-operation and the closely associated Khilafat movements and to the severe strain

placed upon the constitution during the period when these movements were at their height. The Government of the Punjab suggest that the present experiment has been conducted in circumstances so adverse to its success that no decision and perhaps no really just deduction could be drawn from it. The Government of Bihar and Orissa also refer to the difficulties due to the fact that the reforms were introduced in an atmosphere prejudicial to their successful operation. Throughout their course the footsteps of the reforms have been dogged by the growing hostility against the Government in power raised by the non-co-operation movement. That movement may have failed in its definite boycott aims, but it has not failed in the generation of hatred and disrespect of authority. It deprived the first legislative councils of the interest and credit which they might have won from the public in normal conditions; it kept their members in a state of nervous dread of the political agitation outside; and where the embargo on council entry has now been removed it has resulted in the return of councils which have threatened to render the reforms unworkable. Finally the Government of Assam state that one of the important respects in which the expectations of the framers of the reforms scheme have been falsified is the fact that a section of public men, considerable enough in numbers and ability to influence the councils, is actively hostile to the present constitution and declines to work it as reasonable men. We consider it unnecessary for us to emphasize the great importance which should be attached to the observations of the local governments which we have summarized in this paragraph.

7. We proceed now to summarize the general views of each local government upon the working of the reforms.

Views of the Madras Government.

8. The Madras Government report that the transitional constitution has worked with a considerable measure of success in Madras. Some progress has been made towards the understanding of the system of parliamentary government both by the representatives returned to the council and by those who exercised the vote; political education has begun, and the population, both urban and rural, has become more articulate and to some extent more conscious of the meaning and value of the vote. It cannot be said that there are yet apparent signs of the division of parties according to political principles apart from the communal question and perhaps the theory of indiscriminate opposition to all proposals of the government. Even among the politician class the formation of independent groups is not so much due to differences of political principle as to communal considerations or the personal influence of individuals. Among the general body of the electorate personalities count more than principles. There is no lack of general political 'planks' in election manifestoes, but it is difficult to discern

differences such as indicate in more politically advanced countries the real existence of political parties. The Ministers at a time of grave unrest have been able to steady public opinion and feeling, and their moderation has enabled them to refrain from rash and doctrinaire experiments. It is probably too soon to speak of the result of the changes as affecting the various branches of the administration, though probably the standard of efficiency in some departments has been lowered. The Governor in Council concludes that, if an earnest endeavour to work on constitutional lines is a qualification for political advance, the Madras Presidency has shown itself fitter for an advance than any other province. The Madras Ministers, however, attach no importance to minor alterations of the Act and Rules, and they insist that there should now be a complete transfer of all provincial subjects. The Governor in Council is inclined to doubt whether opinion in favour of complete transfer is as unanimous as the Ministers have been led to believe, and he is not prepared to agree that the time for it has yet come.

Views of the Bombay Government.

9. The Bombay Government say that there were no organized parties in the first council, and that therefore there could be no organized support of the Ministers. In the present council the Swarajist party is the only non-official party united by bonds other than communal. It is the strongest in numbers but does not command a majority, and it is pledged to a policy of refusal of political responsibility. The Ministers were therefore necessarily selected from the smaller groups, and this is the first and most important cause of the weakness of their present position. Having no adequate support from their followers they are obliged to rely largely for support upon the official vote, and accordingly the distinction between the two halves of the government is obscured. Further, a large section of the House is parochial in its outlook, and, as decisions depend upon the votes of this section, they are apt to be fortuitous in matters which are beyond the parochial outlook. Progress in parliamentary government has thus been retarded, but some progress has been made. The first stage in the path to responsible government should have been the development of self-governing institutions in the departments already transferred to the Ministry, and this stage has not yet been fully reached. The electorate has yet to learn the importance of returning representatives with a real sense of political responsibility for the welfare of the various peoples of the Presidency. It will be practically impossible to proceed to further stages until this lesson has been learnt. The Bombay Government are of opinion that the main object at present should be to strengthen the position of the Ministers and to encourage the organisation of parties. There is no other road to genuine parliamentary government. The Government do not therefore consider, though in this

matter the Indian members of the Council dissent, that the stage which would justify any fundamental change in the body of the Act has been reached. The Indian Members consider that full autonomy should be immediately granted to the provincial governments, but the majority of the Government holds that effective safeguards would be required in certain essential matters, and there are many other matters which would need the strictest examination before such a drastic measure could be introduced for any provincial government. A satisfactory settlement would require repeated meetings of representatives of the central and provincial governments and an eventual reference to a Royal Commission, and the majority is of opinion that the time for such a reference has not yet arrived. The Government express their decided view that some definite declaration of policy which is to endure for some years is required. With such a declaration provincial governments will be able to go forward secure in the knowledge that their efforts to improve the welfare of the people on clearly defined lines will have that success which a continuity of sound policy ensures.

Views of the Bengal Government.

10. The Bengal Government say that the obstacle which is the root of all the difficulty in working the transitional constitution is the Indian conception of the government as something in which the people have no share or responsibility, and which it is therefore the duty of every progressive politician to criticise and oppose. It is of the first necessity that the elected members should realise their powers and use them. As matters stand, there is no party with a real constructive programme. The Ministers are left to evolve a policy in the time at their disposal and this the members proceed to criticise. These members have, however, no policy to put in its place, and, if the Ministers were replaced by others, the position would be just the same. The council has thus failed to grasp its power to make the government and by supporting it to carry through the schemes which it considers would be beneficial to the country. In the first council progress was made and some solid achievements were recorded. The Ministers also were able to influence a sufficient number of the members to make it possible, with the aid of officials, to carry through a considerable amount of useful legislation. The second council contains a large and influential body belonging to the non-co-operation party which is pledged to prove that the present constitution is unworkable. This body was joined by the independents, and the combined party commands more than 60 votes in a House of a total strength of 140. The majority of the educated classes in Bengal desire provincial autonomy as early as possible, and the difference between the two sections is merely one of method. The Swarajists, as a branch of the non-co-operation party, are fully prepared to use such weapons as social boycott and

are not above resorting to methods of terrorism, while the more cautious section of the educated classes stand to incur unpopularity if they even appear to support government. It is therefore not unlikely that at the next general election there will be a return of an absolute Swarajist majority which may take office with the avowed intention of wrecking the government from within. The constitution therefore requires to be specially considered from the point of view of giving the executive power to deal with obstruction. Apart from certain alterations to meet difficulties in the working of the Act and rules the Governor in Council would strongly oppose any attempt to modify the constitution or to alter the existing arrangements as regards reserved and transferred subjects.

Views of the United Provinces Government

11. The Government of the United Provinces say that it is constantly alleged by their enemies and critics that the reforms have failed. They say that, if this means that the constitution has definitely broken down, the statement must be emphatically denied. Since the collapse in its original form of the non-co-operation movement the internal conditions of the province have steadily improved, and, except for the tension between Muslims and Hindus, there is now nothing to cause its government serious anxiety. Forty-seven millions of people are living peaceably under an ordered and progressive administration and are probably more prosperous than their predecessors have ever been. The reformed constitution has failed to satisfy both the Swarajists and the Liberals, and this constitutes the principal cause for anxiety. The Governor in Council cannot, however, admit that the attitude of the educated classes is the sole test by which the reforms must be judged. He is fully alive to the difficulties and defects inherent in or arising out of the present constitution; but he believes that they lie in directions, and that they point to conclusions, very different from those which its critics have in view when they ingemmate its failure.

Continuation of views of the United Provinces Government.

12. The division of subjects into reserved and transferred was in practice far from complete. On the reserved side the Governor has in the last resort power to enforce his views, but the constant exercise of the power would force a deadlock, and the Governor in Council has often therefore to defer to the wishes of a legislature which is inexperienced and liable to be influenced by sentiment or prejudice. A policy of rigid economy has been pursued during the last two years, mainly at the expense of the reserved side of the administration, and it is impossible to ignore the fact that the financial control exercised by the council has seriously constricted the administration of reserved subjects

which are those on which the conditions of any civilized government depend. Turning to the transferred side the policy of extending the principles of self-government in regard to local bodies has been adopted, and the result has been to deprive government of effective control. The Ministers have adhered to the accepted policy of letting the self-governing bodies learn by their own mistakes. Within these limits the Ministers have sought to guide local bodies in the right direction, but of the actual fact of deterioration the Governor in Council entertains no doubt. The change is not confined to local bodies. The universities impelled by financial pressure have begun to compete for students, and the easier they make their courses and examinations the more likely are they to be successful. This reacts on secondary education, and in primary education there has been little progress despite a great increase in expenditure. In the medical sphere there is a disposition on the part of the council to look askance at the Indian Medical Service, and the dislike of the Indian Subordinate Medical Department is unconcealed. There is also a tendency in the council to foster the practice of what western opinion can only regard as unscientific systems of medicine. In many respects these changes doubtless have the support of Indian opinion; but the Governor in Council cannot regard them as really making for the health or happiness of the people. The Ministers themselves have been working loyally and energetically; and they cannot be held responsible for these results which depend mainly upon the general conditions in which their work has been done.

Conclusion of views of the United Provinces Government.

13. Though he fears that this may expose him to misrepresentation and misunderstanding, the Governor in Council of the United Provinces considers it is essential to get down to root conditions. Ministers and legislators have acquired some acquaintance with the practical difficulties of administration, but political development is still in the most elementary stage. The electors do not recognise that the legislature is their representative, and practically no attempt has been made by any party to educate them in their duties and responsibilities. The electors are mainly members of an illiterate peasantry with many virtues but not many of the qualities out of which the controlling power of parliamentary governments is made. From force of circumstances they are pre-occupied with the difficulties of physical existence, responsive to the claims of their caste or community, passionately attached to their holdings, resentful of interference and oppression, but indifferent to any larger issue save religion, and religion in India is a disruptive force. The relations between the Hindu and Muslim communities are, it is to be feared, decidedly worse than they were 25 or even 5 years ago. As self-government has drawn nearer, the Hindu has become filled with alarm by the more rapid

increase of Muhammadans, their greater virility and the tendency of some of them to look for support to powers outside India. The Muhammadans know they are outdistanced both in wealth and education and fear Swaraj will mean a Hindu rule. The more farseeing politicians see that without a genuine union Swaraj is impossible, but there are few signs of a common patriotism capable of dominating sectarian animosities. In the legislature well organised parties (except for the Swarajists) are non-existent; the interplay of personal factors is incessant; and the formation of stable combinations is impeded by the cross divisions of race, religion and interest. There is no large body of impartial opinion upon which the Minister can rely, and he can rarely take a strong line in opposition to any substantial or clamant section. In short, though this is certainly not surprising, neither the principle of responsibility to the electorate nor the principle of party cohesion has been established in any strength. These are the real obstacles to any rapid political advance, such as the Indian Nationalist desires, and they cannot be removed by any alterations in the details of the Act or rules. The Governor in Council says that dyarchy is obviously a cumbrous, complex, confused system, having no logical basis, rooted in compromise and defensible only as a transitional expedient. It is, however, not an accidental feature but the very essence of the policy deliberately embodied in the Act and the rules framed thereunder. The difficulties and defects inherent in it are quite incurable by any mere alteration of the Act or rules. The utmost such changes could do, if the structure of the constitution is to be maintained, would be to oil the wheels of the constitutional machinery.

The Governor in Council concludes that the answer to the whole enquiry may be summed up in the statement that there is no halfway house between the present and the new constitution. He expresses no opinion on the demand for the latter, but he is clear that concessions which fall short of complete provincial autonomy will placate no section of the opponents of the existing system; that they will secure neither stability nor contentment; and that they will lower the efficiency, already impaired, of the administration.

Views of the Punjab Government.

14. The Punjab Government point to the difficulties which faced the authors of the reforms scheme owing to the division of India into areas widely differing not only in social and temperamental characteristics, but at markedly different stages of political development. At the inception of the reforms the Punjab was an area in which administrative considerations must have appeared to the great mass of the inhabitants to outweigh those connected with political developments.

The executive government was absorbed by pressing administrative problems arising from the rapid material advance of the province. These changes in the conditions of life reacted politically in two directions :—

(i) in the sentiments of [illegible] and even hostility entertained by the agriculturists against the monied and urban interests which tended towards the organisation of [illegible] and interests and therefore to form a basis of political parties; and

(ii) in the intensification of thought on religious or communal lines.

A portion of the Hindu political element clearly welcomed the reforms as likely to afford them an opportunity of confirming a position gained by superior education and capacity in the use of political methods. It is doubtful whether the Muhammadans at large or the agricultural community were at that time entirely aware of the opportunities which the reforms would give them for developing their own interests. The authors of the scheme certainly could not have foreseen the speed with which its working would drive the two main communities into open dissension and would develop antagonism between the urban and rural interests. The agitation of the extreme section of the Sikhs may also be referred to in this connection, though the local government consider this cannot correctly be attributed directly to the reforms. The movement for the reform of the Sikh shrines was only one element in a larger agitation. It secured the unquestioning allegiance of the Sikh peasantry, and this success placed the extreme section of the Sikhs in funds for their campaign. This section recognised the political and numerical inferiority of the Sikhs and hoped to secure by direct pressure what they could not obtain by the ballot; possibly they looked further ahead and hoped to consolidate their position in time to be able to take full advantage of the breakdown of authority which they thought might follow the reduction of British influence in the administration.

Continuation of views of the Punjab Government

15. The immediate aim of the reforms was to arouse political consciousness by constituting and training an electorate and its representatives. There is not as yet evidence of the existence of a thinking and selective electorate in the Punjab, capable of exercising its vote on considerations of policy. The figures do not argue any undue apathy on the part of the electors: in the election of 1920 the percentage of electors voting was low owing to the prevalence of non-co-operation doctrines, but in the second general election 49 per cent. of the electors recorded their votes. There is, however, little evidence of that close touch between representatives and electors which constitutes the vitality of a representative system. The election address is practically unknown; the

constituency judges of the personality rather than the programme of the candidate. The representative seldom, if ever, addresses his electors or canvasses their view on any project of legislation before the council. In regard to the evidence as to the development of responsibility in the council whilst certain charges mentioned in their report can be levelled against the first council the balance of the whole of its account is not to its discredit.

In regard to administration the grave increase in crime should be attributed to economic and other causes and not to the reforms. The failure in many districts to maintain previous administrative standards is only indirectly due to the reforms. It is due to—

(i) the loss of a large number of efficient officers by retirement on proportionate pensions whose place will not be effectively filled by junior officers for some years; and

(ii) the loss of efficiency due to the increasing financial difficulties of officers and to the decline of enthusiasm owing to the removal of much interesting and constructive work from the hands of the District Officers to, for example, local bodies.

In both these causes the reforms must take their share.

On the transferred side the experience gained has not been sufficient to afford confirmation of any feeling that deterioration has taken place. The executive remains the same as before the reforms. The main criticism which is made against the departments administering the transferred subjects is that the Ministry of Education has subordinated the interests of its departments to the support of the communal interests of Muhammadans. It was not unreasonable that the Minister should attempt to secure definite opportunities to the community which constitutes his chief support in the council. The further progress of the tendency must, however, be watched with some care in the interests of the reforms. All communities feel that it is incumbent on them to strengthen and consolidate their own position in anticipation of the possible withdrawal of British authority. In the long run, however, nothing is so likely to produce failure in the working of representative institutions as the inopportune and inconsiderate use by one community of its voting power over others. For the moment, there is every justification for the attempt of a majority community, backward in education and political status, to raise itself to the level of its rivals. Real harm will only be done if that community passes from the constructive task of securing its position to the destructive process of denying equal opportunities to other communities.

Conclusion of views of Punjab Government.

16. Turning to other points the local government say that whatever feelings may be entertained in political circles in favour of the development of "provincial autonomy"—the implications of which have been so little explored or understood—few acquainted with the administrative needs of the country will contest the need for central control in all essential matters. The difficulties in this respect have been due rather to the application of the control than to the principle. So far as internal affairs are concerned it has been impossible in practice to treat the formal division of subjects between reserved and transferred as constituting clear cut spheres of work. In the Punjab, for example, the transferred subjects of "Religious and Charitable Endowments" and "Excise" have been found to be intimately connected with the reserved subjects which are usually referred to under the comprehensive title of "Law and Order." The dyarchical scheme necessarily contains anomalies, and it cannot be contended that the Punjab offered a really suitable field for the introduction of a divided responsibility. So far Ministers willing to co-operate with the executive have been found who have been supported by a party which has not attempted to force them into an extreme position. In other circumstances the complications arising from the reaction of transferred on reserved subjects might constitute a serious danger to the administration. The main object of the present discussion is not the establishment of provincial autonomy. An impartial observer might reasonably object to the transfer of any further subject until the limitations which must be set on the absolute autonomy of the provinces have been adequately explored. In fact the advocates of complete independence of parliamentary control have not foreseen the inevitable results in the creation in India of virtually independent and antagonistic units controlled neither by a central executive nor by a central legislature which must be shorn of its powers by the natural process under which legislative follows administrative independence. In the Punjab, indeed, judging by the attitude of the press, which is subject to Hindu control, there is so little effective demand for further transfers as to create a suspicion that there would be some gratification if the transfer of certain subjects were revoked. At least constant efforts are made to persuade the Governor to control the Ministry in order to safeguard the communal interests of the minority in the council.

Views of the Burma Government.

17. The reforms were introduced in Burma two years later than in the other provinces in India. The Government of Burma have therefore reported with much less experience of the working of the constitution even than that of the Governments of the

remaining provinces. They say that less than seven per cent. of the electorate voted at the only general election held, which was [illegible] by the extremists. So far as the Governor in Council is aware, no member of the legislature has addressed his electors on the problems of the day, and but few have attempted to establish between themselves and their constituents that relation which exists in countries where parliamentary institutions flourish. There has been valuable training of the members of the legislature, but the electorate as a whole stands much where it did before the introduction of the reforms. The Governor in Council concludes that during the 18 months in which the reforms have been in operation hardly any difficulties have been experienced and hardly any defects discovered in the working of the constitution.

Views of the Bihar and Orissa Government.

18. The Government of Bihar and Orissa have forwarded a summary of certain general aspects of the second general election made by the officer who supervised the arrangements for it. He says that public meetings were almost unknown; political canvas was almost entirely the canvas of leading residents, zemindars and lawyers; election addresses were issued in some places but not broadcast; and handbills containing no argument and no explanation of the political position were the commonest form of appeal. He says one may search in vain for signs that three years of the reforms has educated the electorate to the meaning of an election and the business of a legislature. From every district the reports of the presiding officers declare that a large proportion of the voters did not know the name of the candidate for whom they voted, but had only been told the colour of his box. In the standing of the Swarajist candidates for election we have the first signs of the formation of a party system. The candidates were personally of little standing, but they had some notion of organising an ignorant electorate on party lines to vote against the government. They have, however, revealed the amazing credulity and ignorance in the electorate which has to be overcome. The candidates have attributed to their opponents responsibility for raising the price of post-cards, salt, oil, cloth and all the other necessaries of life; they have promised to effect a millennium of no rent and no taxes; and they have exploited the superstition of the masses in regard to the colour of the voting boxes.

Turning to more general questions, the Bihar and Orissa Government include amongst the causes which have contributed to the non-success of the reforms the failure to create a Ministerial party prepared to support the Ministers in carrying out a definite programme. The constitutional structure has been borrowed from

England, but the foundation essential to carry it is lacking in India. This has made the position of the reserved side particularly difficult. The council still remains divided into two parties, officials and non-officials. Where the issue is not an anti-government one, Ministers have their following in council, but they cannot bring this to bear on political issues and cannot therefore assist government in times of difficulty. Another cause is the general political inexperience of the country and the reluctance of the average Indian members to face personal opposition or unpopularity.

In conclusion the local government say there is very little that can be done to smooth the working of dyarchy or to eliminate the different administrative imperfections. If a further step is contemplated, on what grounds is it to be taken? If the object is to pacify at all costs our clamant critics the few minor remedies suggested will not influence them one jot or tittle; they will be satisfied with nothing less than the disappearance of dyarchy and the substitution therefor of provincial autonomy.

Views of the Central Provinces Government.

19. The Central Provinces Government say that the value of the experiment in responsible government during the first council was weakened, firstly, by the lack of connection between the members and their constituents, secondly, by the absence of any party organization which would have made the responsibility of Ministers to the council effective; and, thirdly, by lack of funds. The fair measure of success in the working of dyarchy which was achieved was due partly to the moderation of the council and partly to the efforts made to work the scheme by the Members of Government and the permanent services.

The basis of the reforms was the gradual training of the electorate by the exercise of responsibilities proportionate to their capacity for the time being. The political education of the electorate must be a slow and difficult process, and in the Central Provinces the education given to it during the first council was very small indeed. At the second general election Swaraj was put before the electorate as a vague millennium. The Swarajists made no attempt to explain their policy of obstruction to the bulk of the voters; and in very few of their speeches or broadsheets was the pledge to abolish dyarchy made. The local government refer to the immensity of the problem in the Central Provinces. Even in local affairs the voters with every advantage of local knowledge have not yet learnt the value of their vote and make no effort to control their representatives in matters vitally affecting their interests. For the local legislature the franchise covers about 1·1 per cent. of the total population most of them illiterate. A period of four years is far too short a time in which to expect the growth of political ideas in an electorate so handicapped by

illiteracy and general lack of the political sense as that of the Central Provinces. The Governor in Council therefore considers it would be premature, until the electorate gives evidence of an active and intelligent use of the franchise to make any further advance in the direction of responsible government.

Views of the Assam Government.

20. Finally, the Assam Government say that the new council contains an organised Nationalist party comprising approximately one half the elected members with a Swarajist nucleus and leader. Outside this party there was neither at the elections nor is there in the council any party [illegible] Many of these other members, however, are in many respects more inclined to oppose government than to support it. It is regrettable that the acceptance of office by the Ministers and the indication of a genuine attempt on their part to work the existing constitution are sufficient to alienate from them the good will of the council as a whole and to deprive them of the influence which they exercised as private members. The difficulty of the position is aggravated by the fact that the Swarajist party in Assam draws its inspiration from the all-India leaders who have made it clear that their object is the early establishment of Dominion Home Rule, and in face of this larger issue provincial autonomy is a minor and subsidiary proposition. One of the main causes of the present trouble is the failure to realise the anticipation of the authors of the reforms that reasonable men would conduct themselves in a reasonable manner in a spirit of compromise and co-operation. A considerable section of the council is openly hostile to the present constitution and is indisposed to consider the proposals of government on their merits. No regard is paid to the dictum of the Joint Committee that the Governor's power of restoring demands on the reserved side was intended to be real, and that its exercise should not be regarded as unusual or arbitrary. On the contrary the use of the power leads to declarations that the reforms are a sham and the powers of the council illusory. The dangers of such an agitation among an uninstructed electorate and an ignorant population are obvious.

The Governor in Council sums up the difficulty of working the constitution as due, firstly, to the existence of a section of public men, considerable enough in numbers and ability to influence the council, which is actively hostile to the present constitution and declines to work it; and secondly, to the financial difficulties which have precluded the local government from undertaking any activities other than carrying on the essential administrative functions on pre-existing lines. The Ministers have thus no convincing answer to the cry of their opponents that the reforms have bestowed no benefits on the electors. With such an improvement in the financial position as would place the Ministers in a position to carry out schemes of public utility and thus enable

them to consolidate their position with the electorate, there is a reasonable prospect, at least in Assam, that reasonable men prepared to work the constitution in a reasonable spirit would command a majority in the council and would in due course be able to justify a further substantial advance towards responsible government. Without this, palliatives like the transfer of further subjects will have little effect in improving the situation.

Views of dissenting Members of Council and Ministers.

21. In the foregoing summary of their reports we have referred to the views of the Governors in Council. In some cases these views were not shared by all the Members of Council, and the Ministers frequently did not support the views accepted by the Governors in Council. We proceed, therefore, to summarise briefly the views urged in the enclosures to the reports of the local governments by the dissenting Members of Council and Ministers who were in office at the time when the reports were made.

(*a*) No Member of Council in the Madras Presidency dissented from the views of that Government. Two Ministers, Sir A. P. Patro and Mr. Ramarayaningar, however, annexed memoranda to the local government's report, and the latter Minister also on a later date forwarded a criticism of the picture given by the local government of the working of the constitution. Sir A. P. Patro states that the opposition in the council must subject all governmental measures to effective criticism. On the reserved side, however, criticism may only consist in giving advice and making recommendations, and the sense of powerlessness over the reserved subjects leads to a sense of irritation and despair. It is a tribute to the commonsense of the members that they did not make extreme or illegitimate demands on the Reserved Departments. There is now a strong determination of all parties to obtain an effective voice in the administration of the reserved subjects. The position of the Ministers has, therefore, become very serious. Are they to vote with the reserved half or are they to carry out the will of the majority of the council? On the other hand if the Ministers vote against the reserved subjects the administration of those subjects becomes very difficult. The test of political responsibility lies in the amount of assistance which the council will accord to the administration of law and order. In Madras the council fully realised its responsibility in this respect during the most critical times. So long, however, as it is a reserved subject the council will not have full confidence, and its administration becomes more difficult. The council does represent public opinion and further does a good deal to create it. The relations between the members and their constituencies in the party supporting the Ministry have been more or less closely preserved by a series of conferences. The work of the council also started on a kind of party system. The dyarchical system, however, has had the best trial in Madras, its

difficulties are now known, and it is necessary that all provincial subjects should be brought under the control of the council with the reservation that in the cases of law and order and finance residuary powers to meet emergencies should be given to the Governor. A special member should also be appointed as Deputy Governor to administer central subjects.

Mr. Ramarayaningar says there is no doubt that the reformed councils are an improvement over their predecessors as they have the people behind them and are capable of doing a great deal effectively either for good or for bad. In spite of several defects in the constitution the Madras Government fared well, and this was much to the credit of the Governor. The constitution has become complicated and difficult to work. The three years which has elapsed has given the experience expected from the ten years period, and, knowing that the transitional stage is attended with serious risks, it is no use keeping to that stage. The political consciousness of the masses has been roused, and they are prepared to run risks to gain political advantages. A return to the pre-reform position is impossible. The only course open is to go forward. All subjects must be transferred to the control of the council with the retention of residuary powers in the Governor in the cases of finance and law and order. Madras has worked the reforms fairly satisfactorily and must have its reward. It is no exaggeration to say that in every Transferred Department, Madras has been able to advance rapidly, and the advance would have been more marked, if the contribution under the Meston Award had been foregone.

(*b*) The two Indian Members of the Bombay Government dissented in some respects from the views of the local government, and the Ministers have endorsed the views of the Indian Members of Council. They say it cannot be contended that even in 1929 full responsibility cannot be contemplated because in the meantime more subjects have not been transferred. When the reforms were introduced the country was divided into two main camps: one was composed of the non-co-operators, who regard the reforms as a sham, and the other, while not fully satisfied, were nevertheless prepared to work them as far as possible. The Act has not been put into practice in the spirit in which it was drafted or worked in the way in which it was intended. It can hardly be said that there has been actual and full control of the Transferred Departments by the Ministers and the council. The forming of parties under a system of dyarchy, whereby the Minister is placed under the dual control of the council and of the Governor, is impracticable. The entry of the Swarajist party prevented the formation of a Ministerial party. In the present circumstances there can be only two parties, the government party, consisting of Executive Members, the Ministers and official members, which

is the party in power, and the opposition, part of which supports government when it suits its purpose to do so. No palliatives will be of any effect, and the creation of an authority to control the government in the shape of a responsible elected council can only be achieved by the grant of full responsibility in the provinces. A Royal Commission will be necessary to decide—

(i) the relations of the provincial and central governments;

(ii) the provision required for the protection from party politics of all the services by means of a Public Service Commission; and

(iii) the provision required for the due security of provincial finances.

(c) Sir Abdur Rahim and Mr. A. K. Fazl-ul Huq forwarded separate notes with the report of the Bengal Government. Sir Abdur Rahim states that any step of a retrograde or reactionary tendency would be in opposition to unanimous Indian opinion and gravely intensify political difficulties. Indian public opinion, as voiced by many of its influential and responsible exponents, is for the immediate grant of an entirely autonomous and responsible government in the provinces and the introduction of a considerable measure of responsibility in the central government. He admits frankly that before supporting this demand he would wait until a genuine experiment has been made in responsible government for the life of two or more councils in the transferred subjects. No such experiment has yet been made, and he desires to see how far the electorate and their representatives are able to realise their responsibility when thrown on their own resources. He points out that we have also to be completely satisfied as to how far the communal groupings in India, the existence of which cannot be ignored or minimised, are, or are not, consistent with political responsibility. Critics of dyarchy who say that it is unworkable mean different things. The Swarajists apparently mean that it has not achieved the millennium. Other theorists argue that the form of government which the people were used to from time immemorial until 1921 indicates that government by a representative assembly can only lead to inefficiency and perhaps anarchy. The first council in Bengal worked creditably. The Ministers, however, latterly came in for a great deal of criticism for supporting the official view on some important administrative questions in the police and the jail departments. Even the members of the council who always found themselves in opposition to government never thought of obstruction by the wholesale rejection of the budget. The impression which prevailed among them was that the Ministers retained their office through the goodwill of the Governor, and not that the Governor would be constitutionally bound to dismiss them if they lost the confidence of the council.

The entry of the Swarajist party caused the working of the council to assume a different aspect. The sole object of this party was to obstruct the government with a view to force the British Parliament to grant immediate Swaraj. The fate of this party is difficult to foretell, but we must reckon upon the possibility of there always being a party impatient of the pace by which the British Parliament may regulate the development of responsible government in India. He therefore makes detailed proposals for the establishment of a stricter form of dyarchy and says that he thinks that not even the Swarajists with all their enticing shibboleths and numerous trickeries can for long persuade the council not to make the best use of the opportunity given to it of becoming genuinely responsible for the administration of the transferred subjects. If even then the council is unable to rise to its responsibility, government can well hold with a clear conscience that the country is not yet ripe for responsible government and would be justified in seeking some other method of advance.

Mr. A. K. Fazl-ul Huq, on the other hand, is not prepared to support the suggestion that dyarchy should be worked in the form suggested by Sir Abdur Rahim. He suggests that representative institutions have been thrust upon India, although, as known in the West, they are utterly unsuitable to Indian conditions. Oriental ideas of Kingship are fundamentally different from those that prevail in the West; political conditions in India debar the possibility of any harmonious working of representative institutions; and the political atmosphere, arising from the incessant communal strifes and other causes, makes the growth of self-governing institutions an impossibility. Representative institutions in their proper form cannot be expected to flourish in India. It has been a great mistake to force upon India a constitution unsuited to Indian conditions, and it would be a serious blunder to extend its operation unless conditions materially change. He strongly deprecates as a fatal blunder any advance by way of the transfer of more subjects. That would increase political agitation in India and encourage lawlessness and defiance of authority. The constitution should be worked for the full term of its probation.

(*d*) The Indian Member of Council in the United Provinces forwarded a separate note and so did the Ministers. The Indian Member says that the system of dyarchy was in practice put to a different test by different provincial administrations. In some provinces the system of joint deliberation by the two parts of government was started but could not achieve success because of the inherent defects in the very scheme of dualism. The provinces in which the system of separation was followed fared no better, because two different systems in one government are not practical. The Ministers were required to defend the decisions

of the entire government and to feel responsibility for conforming to the wishes of their constituents, and this placed them in a very precarious position. The Members of the Executive Council cannot do without the council, and some of their responsibilities are so unpleasant that no such Member can claim to enjoy the council's confidence. It must be decided whether government should shut their eyes to the present position or take up the question of removing at once any flagrant defects in the constitution. He is convinced that the Government of India Act must be amended ultimately. He suggests dyarchy should go and the government should consist of Ministers only, of whom one or two should be nominated from among the members of the Civil Service. The powers of certification and veto should be retained. Otherwise, the only safeguard he recommends is the constitution of a second chamber.

The United Provinces Ministers think that the time has come for a step forward and the handing over of a large degree of responsibility to Ministers responsible to the legislature. They refer to the difficulty of the Ministers in connection with the Reserved Departments. They say, if they vote with Government, they will be voting against their own party and may alienate the sympathy of its members. They know the uphill task it has sometimes been to persuade non-officials to agree to some proposals on the reserved side. As safeguards to provincial autonomy they suggest that the landlords should be given increased representation in the landlord constituencies or that there should be a second chamber. If it is considered impossible to amend the Act on the lines which they recommend, they would eliminate the evil of dyarchy by transferring as many more subjects as possible.

(*e*) In the Punjab separate notes were forwarded by the Indian Member of Council and by the Ministers. They suggest the transfer of more subjects, but the general considerations, which we are now summarising, are on the whole absent from their notes.

(*f*) The Burma Ministers also annex a separate note to the Burma Government's letter. The note contains but few general observations. We observe, however, that they definitely recommend, on the ground that Burma is not India, the transfer of all central subjects, except Imperial defence and foreign relations, to the Ministers and also [illegible] of all provincial reserved subjects.

(*g*) The Indian Member of the Executive Council and the two Ministers of Bihar and Orissa also forward separate notes. Mr. Sinha states that the inherent defects of dyarchy are patent. The system is too complex and complicated and is unwarranted by

political experience. Educated Indians contend that they understand a benevolent despotism but cannot appreciate the dyarchic hybrid. Professor Lowell points out that "the foundation of government is faith not reason." If this be true of European states it can be predicated with even greater certainty of Asiatic countries and their governments. It may be that the full political paraphernalia of a constitutional governor and a responsible minister must wait the revision of the constitution in 1929. He accordingly agrees with the Honourable Ministers that all departments of the provincial government, other than those relating to the political and the judicial departments, should be transferred. He desires this change not with the object of pacifying or placating the avowed opponents of the present system. For, in Bihar and Orissa, these opponents are a mere handful compared with the less vociferous "sturdy, loyal people." Dyarchy has failed to evoke that faith which is the foundation of Government. His recommendations for transfers are intended to avoid too rapid changes and to avert the chances of prospective insecurity. He defers to the views of his Government, however, that the transfer of all these subjects would be found so unworkable as to produce a deadlock in a year's time, and he therefore comes to the conclusion that the present constitution should be superseded by complete provincial autonomy which alone seems to be the true solution of the difficulty.

The Bihar and Orissa Ministers say that the anomalous character of the present system is patent. The splitting of the component parts of the administration, apart from its difficulty, has raised a grave suspicion in the minds of the people that the British Parliament has no trust or confidence in the people in the administration of all provincial subjects. The remedy for the inherent defects in the constitution lies in changing the whole constitution. Nothing short of complete provincial autonomy will satisfy the people, but, if this is outside the scope of the enquiry, fresh rules should be made for the reclassification of subjects, and, if a much larger number be transferred, the majority of the people will be satisfied.

(*h*) The Indian Member of Council in the Central Provinces also forwards a note of dissent. He classifies the heads to be considered under seven heads in all. The first three relate to the electorate. As regards this he admits that it is small and the electors mainly illiterate, but the latter fact does not necessarily connote want of interest in, or appreciation of, political issues. He believes that the electors grasped the view at the last general election that the Swarajists were fighting a battle in their interests, and, considering how recent

has been the awakening of political consciousness, he thinks this appreciation of the candidates believed to be working in their interests by the electors is a fact of great value. The remaining four heads are more important. They relate to the members of the council. They were distrustful in the first council of government motives and policy on the reserved side, but the position would have been better, if they had been given responsibility for all subjects, in which case the extremist section would not have followed a policy of obstruction. The absence of a party system was natural; the concentration of effort was for a continuous battle against government; and the first elections being what they were neither the electorate nor the representatives felt any necessity of holding to account or being accountable. One thing is clear, dyarchy neither had nor can have a fair trial. Full provincial autonomy might be attended by some risks but it would be a right step for deciding whether parliamentary forms can be properly worked in the interests of the people at large. Even now safeguards can be introduced by the retention of larger powers to the Governors. All provincial subjects should be now transferred.

(*i*) Of the two Ministers in Assam Mr. P. C. Datta thinks that in the present temper of the people nothing short of full responsible government in the provinces or at least a sure prospect of its early attainment will placate them. If this line of advance is not within the scope of the enquiry the preamble to the Government of India Act should be altered so as to declare that India will get responsible government within a definite period subject to such reservations as may be found absolutely essential. If Parliament is unwilling to commit itself to this, the only alternative is to revert to a Council form of Government with such modifications as may be necessary to conform to the declaration of 1917. The position of Ministers is unenviable. All the fury of the new party is directed against them. Whether dyarchy is to be retained or abolished is a question which has to be decided for all the provinces together. A reversion to the Council form of government would be a pretext for inveighing against Parliament, but this will not make the position worse, and deadlocks will be avoided.

Syed Muhammad Saadulla says that the position of Ministers under the constitution is one of great delicacy and difficulty. They are under two cross-fires and must please both the Governor and the council. So long as the constitution remains a dual one, it will encounter vigorous criticism. Any advance in the present constitution should be on the lines that there should be only one government, that is, the Governor and Ministers alone. It could

be provided, however, that one of the Ministers should be a government officer to be elected or selected from the officials in the council. To work the present system Ministers should be given more authority and more power. To the Indian mind the word Minister connotes patronage and autocratic power. The Ministers should therefore be empowered to make all appointments in the subordinate services and the provincial service should be filled on his recommendation by the Governor, irrespective of the choice of the Head of the Department. This will visualise his power to the public at large. In India as everywhere else money marks the man, and the Ministers must therefore be given the same pay and status as the other Members of Government.

Witnesses before the Committee.

22. We now turn to the evidence which has been given directly to us either orally or in writing.

In the resolution in which our appointment was announced the Government of India invited any persons who desired to do so to send memoranda of written evidence to the Secretary on or before the first day of August and also to indicate whether they were prepared to give oral evidence if desired. We extended the date fixed for the receipt of written evidence from time to time right up to the end of our enquiry. Before we first assembled also, under the instructions of the Chairman, a copy of the resolution was communicated to each person who had held office as a Member of an Executive Council or as a Minister since the introduction of the reforms and who had ceased to hold office and was not one of ourselves but was in India at the time; their attention was drawn to the invitation to give evidence; and it was suggested that they should be in a favourable position to give evidence on the subject matter of our enquiry.

We append a list of Associations and persons who furnished us with written and oral evidence (Appendix No. 1). We have caused the more important written memoranda presented to us to be printed in a separate volume which we annex to this report (Appendix No. 5). It contains 57 memoranda from various persons and associations. We also orally examined 26 persons and we annex the record of their oral examination in two printed volumes to this report (Appendix No. 6).

The leader of the Swarajist party in the Legislative Assembly, Pandit Motilal Nehru, was invited by the Government of India, to serve on this committee, but he did not accept the invitation nor did he or any member of the Swarajist party offer any evidence.

23. The witnesses who tendered oral or written evidence included the following past Members of Council and Ministers :—

Names.	Whether oral evidence was taken in addition.
(i) Sir K V. Reddy, *ex*-Minister, Madras . . .	No.
(ii) Sir Chimanlal Setalvad, *ex*-Member of Council, Bombay	Yes.
(iii) Sir Provash Chunder Mitter, *ex*-Minister, Bengal .	Yes.
(iv) Sir Surendra Nath Banerjea, *ex*-Minister, Bengal .	No.
(v) Mr. A K. Fazl-ul Huq, *ex*-Minister, Bengal .	Yes.
(vi) Mr. A. K. Ghuznavi, *ex*-Minister, Bengal .	No.
(vii) Nawab Bahadur Syed Nawab Ali Chaudhury, Khan Bahadur, *ex*-Minister, Bengal	No.
(viii) Mr. C. Y. Chintamani, *ex*-Minister, United Provinces	Yes.
(ix) Mr. Harkishen Lal, *ex*-Minister, Punjab . . .	Yes.
(x) Mr. S. M. Chitnavis, *ex*-Minister, Central Provinces .	Yes.
(xi) Rao Bahadur N. K. Kelkar, *ex*-Minister, Central Provinces	Yes.

We have received direct evidence either from a Minister or a Member from every province except Burma, Bihar and Orissa and Assam. Several Members of Council and Ministers who were in office or who took office when or after the reforms were introduced are still in office. In these cases and also in the cases of some such persons who were no longer in office their views have been given in enclosures of the reports from local governments. We would add that we examined all the witnesses in the above list orally except those who were unable for one reason or another to appear before us in Simla. Written and oral evidence was given to us by the Hon'ble Sir John Maynard, Member of Council in the Punjab, on behalf of that Government in order to express that Government's views on points that had been raised by the evidence of Mr. Harkishen Lal; the Government of the Central Provinces also supplied us with a written evidence in regard to certain points in the evidence of Mr. Kelkar; and the Government of Bombay, through the Hon'ble Sir Maurice Hayward, supplied us with written evidence in regard to the evidence of Sir Chimanlal Setalvad. We must add that Sir John Maynard, like all other witnesses, was examined in public, and after the newspaper reports of his evidence had appeared Mr. Harkishen Lal asked to be allowed to reappear and give further oral evidence. We were unable to agree to this, as it would have meant that there would have been no finality to our proceedings. We, however, supplied Mr. Harkishen Lal with a copy of Sir John Maynard's written and oral evidence and

informed him that we were prepared to receive and consider any further written statement which he might furnish to us. Actually he gave his views in an interview to the press and merely forwarded to us a reprint of the report of the interview, which we have, however, considered. We examined Sir Abdur Rahim, Member of Council in Bengal, at the request of the Government of Bengal; and Mr. A. Marr, Secretary to the Government of Bengal in the Finance Department, was also deputed by that Government to explain to us orally the method in which the Finance Department was worked in Bengal.

We examined Sir Frederick Gauntlett, the Auditor General, and Mr. J. E. C. Jukes, upon financial questions. Mr. G. H. Spence Deputy Secretary in the Legislative Department of the Government of India, explained to us how the control over provincial legislation provided for in the constitution was exercised and gave us detailed information about some of the Bills which had been referred to by other witnesses. The Railway Department of the Government of India also furnished us with a short memorandum in regard to the procedure for the discussion of the railway estimates in the Legislative Assembly.

24. We do not consider that it would serve a sufficiently useful purpose for us to attempt to summarize in detail the evidence which has been produced before us, though the specific recommendations which have been made to us for action within the scope of our terms of reference will be referred to later. Generally speaking most of the Indian witnesses before us have attacked the present constitution as having been found after trial to be unworkable and have advocated the immediate grant of provincial autonomy to the provinces and the introduction of a measure of responsibility to the legislature in the central government. So far as the central government is concerned, a common form which the recommendations of the witnesses took was for the transfer to the administration of Ministers responsible to the legislature of all subjects, except—

(i) Political and Foreign relations; and

(ii) Defence.

It is true that the recommendations did not go so far as this in the case of several witnesses, but in the case of one witness, Sir Purshotamdas Thakurdas, they proceeded even further. He had condemned dyarchy as unworkable in the provinces and therefore considered that he could not logically advocate its introduction in the central government. He accordingly recommended that all questions should be considered in the one Cabinet, the constitution of which he proposed, and that the Governor General should be bound by the advice of the Cabinet, unless he was

prepared to dissolve the Assembly, save in respect of foreign relations, where the Governor General would have the power of veto, and in respect of defence, where the Cabinet would not have power to revise the financial settlement, which was to govern the expenditure on the army and was to be revised quinquennially by an independent committee. It is clear that these recommendations, both for the grant of provincial autonomy and for the introduction of a measure of responsibility in the central government, are beyond the scope of any recommendations which we are empowered to make. We do not propose, therefore, to discuss them further, save in regard to the question of what is meant by " provincial autonomy ", the implications of which do not appear to be fully understood by some witnesses, and which we therefore propose to examine briefly later. We think, however, that it is advisable for us to examine the evidence of those persons who have had inner knowledge of the working of the reforms in so far as they make definite complaints regarding the existing constitution.

25. The specific [illegible] ...nt constitution and the [illegible] worked, which are contained in the evidence of the witnesses we are now considering, may perhaps be summarized as follows :—

(i) the failure to [illegible] between the reserved and transferred sides of the provincial governments ;

(ii) the absence of joint responsibility of the Ministers;

(iii) the impinging of the administration of reserved upon the administration of transferred subjects, and *vice versa* ;

(iv) the failure on the part of permanent officials to co-operate with the Ministers;

(v) the vesting of the control of the Finance Department in a Member of the reserved side of the government, the control thus given to the reserved side over the Ministers and, generally speaking, the handicapping of the other departments by excessive financial control ; and

(vi) the failure of the constitution to vest real authority in the Ministers owing to the control of—

(*a*) the Governor ; and

(*b*) the Government of India and the Secretary of State.

We shall refer to the difficulty in regard to the absence of joint responsibility and to the charge in respect of the Finance Department when we come to deal with our recommendations. Neither

of these is peculiar to dyarchy. We shall also deal later with the question of the encouragement of joint deliberation. Of the remaining heads only the third can be directly attributed to dyarchy itself, the rest relate to the manner in which dyarchy has been worked or to restrictions which have been imposed upon the powers of the Ministers.

Impinging of the administration of reserved upon the administration of transferred subjects and *vice versa*.

26. The division of subjects into reserved and transferred subjects is of the very essence of dyarchy, and dyarchy must be held responsible for any failure in the working of the constitution which can be directly attributed to the administration of a transferred subject impinging upon the administration of a reserved subject or *vice versa*. The Governments of the United Provinces and of the Punjab have both referred to this point which is also dealt with by Sir K. V. Reddy and Mr. Chintamani, while several of the grievances indicated in Mr. Kelkar's evidence are also directly due to this reaction of one department of government upon another. It is indeed a difficulty which must arise when any attempt is made to divide the functions of government, and none of us would seek to minimise its importance. It is in fact a difficulty which is experienced to a greater or less extent in the division of sovereignty between the federal and local governments which is a feature of all federations. Some authority must decide on which side of the dividing line the decision of a particular case must be reached. In the provincial governments in India this power has been placed with the Governor, and it was therefore in the exercise of his proper functions that the Governor was called upon to decide which department should deal with the particular cases which, according to one witness, were kicked like a football from one department to another. We fully agree that before any question is decided in a dyarchic constitution which impinges upon the two sides of the administration it is necessary that both sides should see the case and be given an opportunity of expressing their individual views. In some such cases decisions were apparently reached without one side of the administration having had an opportunity of being heard, but this is contrary to the scheme of administration contemplated by the existing constitution. It is true, however, that there should be no doubt upon which side of the administration responsibility for the actual decision taken should be placed. The other side must be free from responsibility for such decisions, and it can then have no real grievance if the decision taken is contrary to any advice which it may have given. Sir K. V. Reddi suggests that such success as Madras is believed to have achieved in working the constitution was rendered possible by the attempt to ignore

the dyarchic system, and Mr. Chintamani also suggests that the dyarchic system worked well in the United Provinces for some time after its inception just in the measure in which it was departed from. The evidence of these witnesses, however, appears to indicate—we hope we are not misrepresenting them—that they were disappointed in not being able to control the decisions on the reserved side of the administration, and in Mr. Chintamani's case the disappointment was doubtless increased because of the change of system to which he refers. Sir K. V. Reddi, for example, states that the Ministers were only three and the Executive Councillors were four, and the former were often obliged to yield to the latter. Mr. Chintamani also says that he asked the Governor to abandon the meetings which he was holding with his Councillors or else to meet his two Ministers together, but he was informed that the Governor had no option but to hold meetings of the Executive Council, but he saw no necessity for weekly meetings of the Governor and the two Ministers, and he would call the Ministers together whenever the need was apparent. Mr. Chintamani also says that the Ministers found that contrary to expectation they were *not* being taken into confidence on *all* subjects (the italics are Mr. Chintamani's). From Mr. Kelkar's evidence it would appear, also, that he felt himself aggrieved on account of some decisions which clearly concerned the other side of the government. He further stated in his written evidence that there is nothing in the Act or in the rules or executive instructions that gives the Ministers a right to force their advice or views on the other half of government. We must conclude the examination of this question by admitting, as we have already done, that the inevitable result of a division of subjects is that one side of the administration must react upon and consequently restrict the operation of the other.

Failure of permanent officials to co-operate with Ministers.

27. We now turn to allegations against the working of the constitution which are not directly connected with the actual form of government. We should have regarded the allegation that the members of the services had failed to co-operate with the Ministers as of the most serious character if we had been able to find that it had been the case on more than a few isolated occasions. We fear that some press reports of the oral evidence before us have created an impression that in some provinces such failures to co-operate were common, but we are not satisfied that any of the witnesses before us actually intended to give such an impression. We proceed, however, to indicate briefly the nature of the evidence produced before us in support of such a view.

28. We take first the evidence of Mr. Kelkar. In his written evidence he stated that the permanent Heads of Departments can and often do challenge the propriety of Ministers' orders, and the Ministers can do them no harm even if their decisions or recommendations are ultimately negatived by the Governor; that the various instances of interference that occurred during his term of office had left an impression on his mind that the bureaucracy still wants to retain the control of the departments in their hands; and that owing to the very wide powers conferred upon Secretaries cases which were, in his opinion, petty or simple were taken to the Governor for final orders. In his oral evidence he explained his position upon these points at greater length. For example, in regard to the suggestion that Ministers have no power to punish the permanent Heads of the Departments who challenge the propriety of a Minister's orders, he said that he would like to have power to punish factious opposition but not an official who puts forward a view which, however wrong it might be, was an honest view. He thought that the permanent Heads of Departments should place their views before the Minister, and, if the Minister overrules them, they should accept his decision and have no right of reference to Government. Later he gave his opinion that probably the Heads of the Departments and the Secretaries thought that "this is a new man who was practising at the bar for some time and has had no administrative experience." They probably thought that he himself would be guided by their advice. And later in regard to a suggestion that the cases in which his decision had not been upheld were cases of detail, he said that in his opinion the Minister should be relieved of these details, but if they came to him and if there is dispute, then it was necessary for him to decide. In his written evidence Mr. Kelkar stated that it had come to his ears from a reliable source that the members of the services refused to help in carrying out the Minister's policy in certain matters. Though this evidence tends to give an impression that there was a lack of co-operation of the members of the permanent services with the Ministers in the Central Provinces, the Central Provinces Government themselves in their report, which was of course forwarded to the Government of India before Mr. Kelkar was examined, stated that the fair measure of success with which dyarchy was worked during the period of the first council in the Central Provinces was due in no small part to the efforts made to work the scheme by the members of Government and the permanent services. The evidence is perhaps more directly in issue in regard to the question of the control of the Governor, to which we shall refer later. We imagine also that, in the main, it means little more than that the Ministers and the members of the services approached questions from a different standpoint and held different views. Referring to this evidence in the later letter, which we have in-

cluded in Appendix No. 5, the Central Provinces Government definitely state that the Ministers in carrying out the several important changes of policy which they inaugurated in their departments received the cordial co-operation of the permanent officials, and in regard to the definite allegation of refusal to help in carrying out the Minister's policy in certain matters, which was only hearsay evidence, they state that the Governor in Council is satisfied that there is no foundation for it.

29. Mr. Chintamani gave evidence of a somewhat similar nature. For example, he said in his written statement that Commissioners and District Officers have many opportunities of making themselves felt in the administration of transferred subjects. In the departments which he had to deal with he said he had to bring to the notice of the Governor cases of attempts at interference by a Commissioner and a Collector in a matter relating to the transfer of an Excise Inspector; by another Collector in a matter pertaining to co-operation; and by a third to the Public Works Department. Mr. Chintamani, however, went on to say that he would like to record that it should not be thought that the instances of interference were very frequent. There were many officers whose attitude to Ministers was correct, and some were cordial and helpful. He said that he looked back to his association with these officers with pleasure, and in some instances with a feeling of gratefulness. In his oral evidence, however, he stated that his official relations with the permanent services were not on the whole good. They were quite good in the beginning, but during the major part of the tenure of his appointment as a Minister they were not good. Official disagreements he said were many and very frequent, but he never questioned the honesty of the difference of opinion of those who disagreed with him. He suggested that if there are a Minister and a Secretary or Head of a Department who differed more frequently than they agreed, and, if the Minister has to force his views upon unwilling agents, and difficulties thus arise, friction would be caused.

30. The only other witness who gave evidence to the same effect is Mr. Harkishen Lal. In his oral evidence he said that his relations with the services generally were very friendly, and that, except in one or two cases in one and the same department, there was no apparent tendency to rebel against him. In one or two cases he says the officials appealed, complained, took legal advice and threatened him with the opinion of the Government of India and with referring the matter to the Secretary of State. In regard to this evidence Sir John Maynard detailed in his written Memorandum two or three cases and stated that no other case of similar friction in any department under the reformed government was traceable. We should, however, in this respect

refer to Mr. Harkishen Lal's suggestion that he had been threatened with legal advice. He referred to this in the interview which he gave to the press, to which we have alluded in paragraph 23. There he explained that the case in which he had been threatened with legal advice or legal opinion was not the case referred to by Sir John Maynard, but another one.

31. On the other hand, several witnesses gave evidence in the opposite sense. Sir Surendra Nath Banerjea referred to the atmosphere of good will which prevailed in Bengal, which extended, he appears to hold, from the Governors to the permanent officials of the various departments.

Sir P. C. Mitter stated that he was happy to state that he and his Indian Civil Service Secretaries worked together smoothly and harmoniously. In his oral evidence he amplifies this statement to the effect that he had never any difficulty with Indian Civil Service officers. It frequently happened that he and his Secretaries did not agree, discussions took place, but after the decision was arrived at, he always had loyal support from his Secretaries. In regard to Indian Educational Service officers, he said that his relations with some of them were equally happy, but with others they were not so.

Mr. Fazl-ul Huq in his written evidence said that he entirely disagreed with those who had declared that Secretaries to Government and other officials often hampered Ministers in the administration of the transferred subjects. He said that he could recall nothing more pleasant than the memory of his association with the Secretaries to Government, Heads of Departments and other permanent officials. He further alluded to the point that the Secretaries generally speaking do not belong to any of the contending communities in India and have been brought up in an atmosphere free from partiality and prejudice. Ministers might be liable to be influenced by political prejudice and even by an unconscious leaning towards their own community. In such cases it would be the clear duty of the Secretaries and other permanent officials of Government to intervene and prevent any possible injury to the public interests.

Mr. Ghuznavi also said that the Secretaries and Heads of Departments who worked with him were uniformly and devotedly loyal. He knew of no single instance where the Secretaries did not faithfully co-operate and carry out his orders in the administration of the Transferred Departments.

Another witness to whom we desire to refer in this connection is Sir Chimanlal Setalvad, who, it may be noted, was a Member of

the Executive Council of Bombay. So far as he himself was concerned, he stated that he derived the greatest assistance and loyal co-operation from the services, though there were one or two instances in which there had been embarrassment with the Ministers due to their lack of control over the services. He explained that he did not mean by this to say that the services tried to thwart the Minister or his policy, as he thought they served the Ministers loyally. He meant that the control of the Secretary of State over the services was calculated to embarrass the Ministers.

In the enclosure to the report of the Madras Government we find that the Madras Ministers express their view that no one will doubt the loyalty of the officials in carrying out the policy of Government. "It is due to the high sense of duty which the superior officials of this province have, that the reforms were so far successful here, but there are symptoms of indifference to the transferred subjects on the part of the services generally working in the Reserved Departments."

32. We are now in a position to summarise our conclusions upon this important question. We consider that [illegible] doubt but that the members of the services generally loyally co-operated with the Ministers in working the reforms. There may have been a few instances in which this was not the case, but we believe they were exceptional. We consider that the evidence before us also goes to show that the members of the permanent services did not hesitate to carry out any policy once it had been decided upon by the Ministers. In some cases we feel that the Ministers did not fully appreciate the position of the permanent services or sought to take a greater share themselves in the detailed work of a department than is normally expected from its political head. It was only to be anticipated that honest differences of opinion would arise between the Heads of the permanent Departments and the Ministers, and that the Heads of the permanent Departments would urge their own point of view with some tenacity. We believe, however, that for the most part they have been prepared to assist the Ministers fully in coming to conclusions and have loyally co-operated in carrying out their general policy. Any contrary conclusion, save in regard to the few exceptional cases to which we have referred, is not, we consider, supported by the answers given in examination by the witnesses themselves, or by other evidence produced before us. As was stated by one witness neither Members nor Ministers nor autocratic nor democratic administrators are exempt from occasional friction and unpleasantness.

Control over Ministers by the Governor.

33. The constitutional view that the executive power in India is vested in His Majesty is recognised in section 1 of the Government of India Act. So far as the transferred subjects in the

provinces are concerned, it is, however, provided by sub-section (3) of section 52 of the Act that the Governor in relation to these subjects shall be guided by the advice of his Ministers, unless he sees sufficient cause to dissent from their opinion, in which case he may require action to be taken otherwise than in accordance with his Ministers' advice. In the same section provisions are made to secure that Ministers shall be members of the local legislature. These provisions were intended to introduce a measure of responsible government on the transferred side of the administration in India. Some witnesses have assumed that the word "advice" implies that the Minister was intended to be merely an adviser of the Governor. No such deduction can, however, be made from the use of this word, as it is used in corresponding provisions in the constitutions of Canada, Australia, South Africa, Northern Ireland, and the Irish Free State, with the object of conferring responsible government. The degree of responsible government is of course subject to the provision which we have cited to the effect that the Governor should be able, if he saw sufficient cause, to dissent from his Ministers' opinion, and this clearly involves a definite limitation upon responsible government. But in deciding not to accept any opinion of his Ministers the Governor was of course intended to be guided, and to have regard to the special responsibilities imposed upon him, by the Instrument of Instructions issued to him by His Majesty. The Governors had also the guidance of the dictum of the Joint Committee to the effect that they should not hesitate to advise the Ministers as to what they thought was the right course, but if the Ministers decide not to adopt their advice to fix the responsibility upon the Ministers and ordinarily allow them to have their own way.

34. The real answer to the question of whether a Governor's control over his Ministers has been excessive is to be found in the number and nature of the cases in which it has been exercised. Mr. Kelkar more than any other witness suggested a large degree of interference by the Governor. He himself, however, admitted that His Excellency the Governor of the Central Provinces generally did not attempt to overrule him so far as broad questions of policy were concerned. His objection was that he was overruled in what he regarded as details of the administration; but he stated that only in one class of case did he observe anything approaching a settled policy, namely, his proposals with regard to punishment, withholding increments, pensions, etc., of Imperial Service officers. We observe in connection with this evidence that the Central Provinces Government have caused their records to be searched and have provided us with a statement summarizing all the cases, fourteen in number, in which the Governor has overruled his Ministers. The statement will be found in Appendix No. 5 to our report. Out of the 14 cases the first 8 relate to the pay, pension or posting of officers of the all-India services, in regard

to whom the Governor is, of course, by his Instrument of Instructions, vested with particular responsibility. The Central Provinces Government in fact state that some of the friction which occurred in connection with service questions was caused by the desire of one Minister to promote and transfer Indian members of the services to posts irrespective of their claims on account of seniority or merit, on the ground that it was necessary to give Indians the amplest opportunities for training. They state that the Governor refused to accept such recommendations to the detriment of the European members of the services, holding that promotions and transfers should be made irrespective of the race of individual members. Mr. Harkishen Lal suggested in his oral evidence that the Governor under the constitution had complete power to do as he liked. Mr. Chintamani says that he himself passed through every stage in regard to the exercise by the Governor of his powers, from "the Honourable Minister is responsible" and "I must support the Honourable Minister", to being overruled in matters of various degrees of importance and unimportance. Sir Surendra Nath Banerjea, however, says that he does not remember any order of his which was set aside by the Governor. The occasions on which there were differences of opinion were not many, these were discussed, and the Governor and he were able to come to an agreement. Finally, Sir Chimanlal Setalvad, after suggesting that the Governor claimed a greater power of interference than was intended, concludes that the Ministers, by firmness and with the ultimate weapon of resignation in the background, fairly succeeded in giving effect to their own policy in the administration.

35. As we have already indicated, the number and the nature of the cases in which the Ministers' proposals were interfered with is a question of evidence. Applying this test we are not satisfied that there was really excessive interference with the Ministers' policy, though the attitude adopted by some Governors may have differed from that adopted by others. It is possible also that in some cases the Governor approached a particular proposal of the Minister from the point of view of what was best to be done in the circumstances of the case rather than from the point of view of how that proposal might accord with the Minister's general policy in the legislature. Even the statements of the Ministers which we have cited would support the view that the Governors normally followed the dictum of the Joint Committee referred to in paragraph 33.

Control over Ministers by the Government of India and the Secretary of State.

36. We do not think it necessary to refer in detail to the evidence regarding the control over the Ministers by the Government of India and the Secretary of State. The general powers of superintendence, direction and control over local governments in the transferred field are restricted to those embodied in rule 49 of the Devolution Rules and in the rule made

by the Secretary of State in Council under section 19A of the Act. It is true that Sir K. V. Reddi in regard to the latter rule states that the powers retained by the Secretary of State are big enough to eat up the rule. He admits, however, that it is difficult to suggest an amendment of the rules. We shall deal with this point later in our report. Mr. Chintamani states that he believed that the amount of control exercised or sought to be exercised over the Transferred Departments, whether in matters of legislation or of administration, had been less than over the Reserved Departments. He claims, however, that there have been cases of interference or attempted interference where he was convinced that there should have been none. It is true that in regard to the members of the permanent services serving in departments dealing with transferred subjects, control was retained and intended to be retained by the Secretary of State in Council under the reforms. The Ministers will, however, obtain greater powers in this respect if the proposals of the Royal Commission on the Services are accepted and given effect to.

The only other point to which we consider it necessary to refer in this connection relates to the control over provincial legislation. It is admitted both by the Government of India and by the provincial governments that the provisions of section 80A of the Government of India Act in regard to the requirement of previous sanction to local legislation are unduly restrictive, and we shall refer to this point again later. We consider, however, that the detailed information given in the written and oral evidence of Mr. Spence in regard to the particular provincial legislative proposals to which witnesses have referred indicates clearly that the local governments have not had very serious grounds for complaint as to the manner in which the existing law has been applied.

Evidence to the effect that dyarchy has failed.

37. When we turn from the specific allegations against the working of the present constitution to the broad allegation that dyarchy has failed and must be replaced we find that the evidence of those Indian politicians who have had first-hand knowledge is not unanimous. Several of the Ministers who have held office in Bengal are, for example, in favour of the retention of dyarchy. Of these, Mr. Fazl-ul Huq, whose general views have been summarised in paragraph 21 above, indicates the difficulty of introducing a system of responsible government amongst a heterogeneous people such as exists in India; the necessity of a well educated electorate before responsible government is possible; and the want of understanding among the present members of the legislature of their proper functions. Dyarchy, according to him, has not had

a fair trial, and, in his opinion, with all its faults it is an essential and indispensable first step towards the attainment of full responsible government by the peoples of India. Mr. Ghuznavi similarly considers that dyarchy must be worked for the full statutory period, because it contains the basic materials upon which the structure of the Indian constitution will eventually have to be laid. And Nawab Bahadur Syed Nawab Ali Chaudhuri states that Government should proclaim in the clearest and most emphatic manner possible that no further amendments of the present constitution will be made at present, except such as may be necessary for absolutely separating the administration of the transferred subjects from that of the reserved subjects, so that the Ministers will be in no way responsible for the policy of the Governor in Council and *vice versa*. Again we have the testimony of Sir Surendra Nath Banerjea, who states that he is unable to say, with due regard to facts, that in Bengal dyarchy has failed, so far as it was under his control. It is true that he recommends that dyarchy should go as quickly as possible and should be replaced, with due regard to the fact that liberty and not licence is required, by provincial autonomy; but he bases this view not upon the failure of dyarchy but because it is, he says, condemned by educated public opinion.

The Ministers now in office in Madras are amongst those who have asked for the abolition of dyarchy and the substitution therefor of provincial autonomy. In regard to their recommendation we would apply to them the maxim applied by Sir Surendra Nath Banerjea, "by their fruits ye shall judge them," and, if this is done, we find that the Ministers themselves claim in the enclosures to the report of the Government of Madras that the Transferred Departments have been able to put in a large measure of constructive work not only in legislation by enactments of important Acts such as the Industrial Loans Act, the University Reorganisation Act and the Religious Endowments Bill, but a great deal of spade work in overhauling the existing system in Excise, secondary and elementary Education, Public Works, Registration, and the organisation of the Health Department for affording better medical relief in rural areas. A greater decentralization, they say, has been effected in the financial relations of local bodies; and further that the underlying principle adopted in the revision of the systems hitherto followed in the Transferred Departments was that of continuous steady progress.

38. Some of the reasons which have been advanced by the remaining witnesses, who have a claim to first-hand knowledge, to show that dyarchy has failed also cannot be ascribed, either wholly or in part, to dyarchy itself. It is clear that the electorate should be educated to realise the responsibilities vested in them, and

further that the members whom they elect should also understand and be prepared to use their powers to control the administration of the Transferred Departments by Ministers. The education of the electorate must naturally be a slow process, and the fact that they are not yet sufficiently educated can scarcely be attributed to dyarchy. It is possible, however, that the failure by the members of the legislative councils to grasp the situation may be partly attributed to the system of dyarchy. Amongst the reasons for this failure may be mentioned the lack of experience of the members of the councils themselves, the fact that no party system had been developed and the appointment of Ministers individually instead of collectively. Another reason is the connection of the Ministers with the reserved side of the administration. They have been treated in some provinces, on acceptance of office, as though they had become a part of the executive government, and, as such, people to be attacked and thwarted. This aspect of the case has already been referred to in our summary of the views of local governments, and we would refer in particular to the views of the Bengal and Assam Governments summarized, respectively, in paragraphs 10 and 20 above. It is also alluded to by Sir Chimanlal Setalvad, by Sir P. C. Mitter and by Mr. Kelkar, to mention only some of the witnesses who have given evidence to us. Sir Chimanlal Setalvad, for example, refers to the entire misconception of the situation which was held by the members of the legislative council in Bombay, and he illustrates this by reference to a proposal to constitute an association of elected members with a view to discuss the policy to be adopted on various questions coming before the council from time to time. When this proposal was made, he tells us, it was promptly decided that the Ministers should not be admitted as members of the association. Mr. Kelkar also says that Ministers are looked upon as government men. It is obvious that before any responsible system of government can work satisfactorily, it is necessary that the Ministers should not only be members of their party but the leaders of it. The members of the legislative councils also must grasp their powers. It is not only unnecessary, but it is clearly inadvisable for them to attempt to interfere in the details of a Minister's administration. They have not the detailed information which alone could justify such an interference, but they should make it clear that they will hold the Minister responsible for the main policy which he adopts. The absence of a properly developed party system in practically all the councils and also the communal differences have further contributed to the difficulties which the new constitution had to face. All of these, however, are difficulties for the solution of which time is required, and they would arise in an almost equal degree under any system of responsible government which might have been introduced in India.

39. We have now completed our examination of the evidence produced before us to the effect that dyarchy has failed. It is clear that witnesses have frequently made this allegation with reference not to dyarchy itself and have been thinking not of the division of functions, which is the essential principle of dyarchy, but of other features of the constitution. Complete dyarchy was not in fact established. For complete dyarchy it would have been necessary to have established a complete vertical division of functions between the two halves of a provincial government, and to have endowed each half with a separate purse, with a separate permanent staff and with a separate legislature; in the same way as in a federal constitution, there is a corresponding horizontal division in these respects. We have of course no evidence to show how such a system might have worked in India. The partial dyarchy which was introduced is clearly, as stated by the Government of the United Provinces, a complex, confused system having no logical basis rooted in compromise and defensible only as a transitional expedient. A complex constitution like dyarchy, requires more particularly to be worked by reasonable men in a reasonable spirit, if deadlocks are not to ensue. In this, however, it is by no means unusual, for many democratic constitutions contain in the words of Lord Bryce "a body of complicated devices, full of opportunities for conflict and for deadlock." The existing constitution is working in most provinces, and it is giving a training in parliamentary government to the electorate and also to the members of the legislatures and to Indian Ministers. While the period during which the present constitution has been in force has been too short to enable a well-founded opinion as to its success to be formed the evidence before us is far from convincing us that it has failed. If, recently, in some of the provinces, it has not achieved the expected measure of success, it is because it was not worked on the lines and in the spirit which was intended. We hold in fact that, except by some form of dualism, it was not possible to afford an equally valuable training towards responsible government in India and still to safeguard those conditions upon which government depends.

Conclusions in regard to evidence as to the working of dyarchy.

40. As we have already stated the non-official Indian witnesses before us have generally speaking confined their attention to the grant of full responsible government in the provinces. Some of them, however, have not referred to the structure of the provincial governments but have addressed us regarding particular questions only. The necessity for precautions in regard to social legislation which will affect the religion and the religious rites and usages of the Hindu community has been raised in a memorandum from Hindus in Bengal and

Other evidence.

Assam and by other persons. To the former memorandum a useful brochure on the record of the first Legislative Assembly in this respect, prepared by Mr. Jogendra Nath [illegible] a member of that Assembly, is attached. These witnesses suggest the adoption of precautions with the object of securing that such legislation is not passed unless it is supported by the community mainly affected. Other witnesses have addressed us on the following particular questions only :—

(i) representation for the working classes in the legislative bodies;

(ii) representation for the depressed classes in the same;

(iii) representation for the landlords of Calcutta in the Bengal Legislative Council;

(iv) women's franchise; and

(v) the protection of the members of the services serving in departments dealing with transferred subjects.

In regard to the witnesses who have addressed themselves to the main constitutional issue we have already in paragraph 24 mentioned the *ex*-Ministers who have objected to any advance in the constitution at present. Similar views have been urged by—

(i) societies representing the depressed classes in the Madras Presidency;

(ii) societies representing the tenants in Bengal and Bihar and Orissa;

(iii) the European Association; and

(iv) European Chambers of Commerce in Bengal and the United Provinces.

41. As a counterpart of the view that until communal representation is done away with there should be no advance towards self-government which is mentioned by Mr. Harkishen Lal in his evidence as being held by certain of his friends in the Punjab, we would refer to the resolution passed at a mass meeting of Muhammadans held at Agra and addressed by Dr. Ziauddin Ahmed to the effect that the Muhammadans will not support the grant of any further instalment of the reforms till certain principles which will secure the position of Muhammadans have been settled.

The resolution in which these principles were expanded was as follows :—

> "That no form of Self-Government which does not provide adequate representation of Mussalmans in Legislature and other electorate bodies, can be accepted by the Mussalmans. It is also necessary that the interests of the Mussalmans be safeguarded by fixing an adequate proportion in all Government posts including the posts recruited by competitive examination and by providing special facilities in their education and by guaranteeing them their full religious liberty and by undertaking that no resolution or bill affecting the interests of the Mussalmans will be carried if half of the Mussalman members vote against it. These safeguards are essential to maintain Hindu-Muslim unity without which Self-Government is impossible. These safeguards should form integral part of the constitution of the Government and it should not be changed if three-fourths of the Mussalman members are against it."

The Punjab Muslim League on the other hand endorsed the following resolutions of the All-India Muslim League at the meeting held at Lahore in May 1924.

> "Whereas the speedy attainment of Swaraj is one of the declared subjects of the All-India Muslim League, and whereas it is now generally felt that the conception of Swaraj should be translated into the realm of concrete politics and become a factor in the daily life of the Indian people, the All-India Muslim League hereby resolves, that in any scheme of a constitution for India, that may ultimately be agreed upon and accepted by the people, the following shall constitute its basic and fundamental principles."

The principles were of a similar character to those of the Agra meeting but they also included the following :—

(*a*) The existing provinces of India shall all be united under a common Government on a federal basis so that each province shall have full and complete provincial autonomy, the functions of the Central Government being confined to such matters only as are of general and common concern.

(*b*) Any territorial redistribution that might at any time become necessary, shall not in any way affect the Muslim majority of population in the Punjab, Bengal and North-West Frontier Province.

In a further resolution the League after referring to the inadequate nature of the present reforms urged that immediate steps be taken to establish Swaraj, *i.e.*, full responsible government.

42. Mr. Sapre, Professor of History at the Willingdon College in the Satara District in the Bombay Presidency, would retain dyarchy and advance by reducing the powers of the Governor, and Mr. Surve, Member of the Legislative Council in Bombay, would transfer further but not all subjects. Other witnesses who favour the grant of provincial autonomy would insist on certain safeguards. For example, Sir P. C. Mitter, in his first memorandum addressed to the Bengal Government stated that he was one of those who firmly believe that the time is not yet ripe for full provincial autonomy, and that in the present stage of the immaturity, illiteracy and gullibility of voters it is essential that full responsibility should not be given immediately to the voters and the members of the legislative council over any single department of the government. In the second of the two memoranda which he addressed to us he favoured the grant of responsible government to the provinces with the reservation that if a council fails to pass a budget the Governor should have power to order appropriations on the basis of the previous year's budget, a device taken from the constitution of Japan, and the safeguard of a second chamber. Sir Chimanlal Setalvad, also, would only give provincial autonomy to the major provinces and would accompany it by special safeguards for the members of the services and for securing the carrying out of large schemes in regard to which the provinces have already entered into financial commitments and by vesting emergency powers in the Governor for the maintenance of tranquillity.

The permanent services.

43. In paragraphs 27 to 32 above we have dealt with the allegation that the members of the permanent services had failed to co-operate with the Ministers. Before we conclude this part of our report we think that we should refer to another aspect of the evidence in regard to the permanent services which has been placed before us. This point is referred to in the reports of several local governments, but we think that we can illustrate it best by a quotation of the words of the Government of the United Provinces :—

> " The spirit and the outlook of the services are not what they were. It may be difficult to specify the precise extent to which they have been affected, or to disentangle the various causes. But of the broad fact there can be little doubt. In the heated political atmosphere of the first fifteen months after the inauguration of the Reforms, the European services were the object of

constant vilification and abuse in the press and on the platform; indeed, as will be seen from the published proceedings, in the Legislative Council also, where though criticism was more restrained, it was often hostile and prejudiced. During the more peaceful period, which followed the collapse of the campaign of disorder, matters have much improved: and from various quarters keen appreciation has been expressed of the capacity of European officers to handle a difficult or dangerous situation. But there is still a tendency to look very sharply into any mistakes or shortcomings of hard pressed European officers, and to ignore their reasonable claims. More than one resolution has been passed which, if carried out, would have deprived them of appointments to fill which they had been recruited. It is not suggested that the Legislative Council has deliberately sought to inflict injustice on European officers. The constitution of the all-India services is not well understood, and many members of the legislature are influenced by the feeling (for which there is justification) that in the past Indians have not received their fair share of the higher appointments. The natural effect, however, of the attitude of the legislature has been to create in the minds of Englishmen serving in India an impression of hostility and a feeling of insecurity, which makes it difficult for them to give of their best. There are distinct signs that the services are losing their former keenness. Since they no longer have the power of shaping policy to the extent which they had, they no longer feel that the progress of the country depends upon their efforts, nor indeed that any efforts of theirs are likely to have abiding results. Enthusiasm and energy have also been sapped by financial pressure, and by the cloud of uncertainty which hangs over the future of the country to which they have given their lives."

We consider that this extract points to a regrettable feature of the present conditions prevailing in India. We are impressed with the desirability in the interests of India's constitutional development of securing contented permanent services and a return to that keenness which it is said is being lost. None of us would deny that during the months following the inauguration of the reforms the services were subjected to much unjust criticism and to a great deal of annoyance. We are, however, of opinion that criticism of the services is inevitable in the present conditions of India. The extent to which the permanent official may by his advice influence policy is apt to concentrate criticism on him which

should rightly attach to the government which adopts the policy. This is unjust and unfair but, in view of the position which the services have held in the past, is not altogether unnatural. It is possible that the services do not sufficiently make allowance for this aspect of the case. Criticism they will inevitably encounter in the exercise of their functions, and some of this criticism may be quite unjust. That is perhaps a consequence of a democratic or a partially democratic constitution. It is when that criticism takes a racial bias that we all consider that it must be wholly condemned.

PART II.

PROVINCIAL AUTONOMY.

44. The phrase "provincial autonomy" has been much used in the evidence that has been given before us. We think it eminently desirable that we should examine with some care the implications which it really connotes while drawing attention to the looser sense in which it has undoubtedly been employed. Catchwords of this nature are often of greater importance in their popular application than in their stricter meaning.

45. Provincial autonomy in the accurate sense of the term implies—

(1) the existence of a central government,
(2) the existence of provincial governments.

The distribution of power between the central and provincial governments may vary within very considerable limits, but the central government must have some control or the autonomy of the provinces would be complete.

46. No particular form of constitution whether in the central government or in the provinces is a necessary implication of the term. In their own spheres the constitution of the central government and of the provincial governments may be autocratic or democratic and the provincial governments may vary *inter se* as to their constitutions.

47. Though this is the strict use of the term, there is no doubt most of those who have used it before the Committee have contemplated that the provincial governments at least should be responsible to the legislatures, and indeed when using the term have used it rather to mean the grant of responsible self-government in the provinces than in its accurate meaning.

48. The essential feature of any system of provincial autonomy is the division of functions between the central and provincial governments, and that is a matter which has presented great difficulties in all federal constitutions. Now prior to the Government of India Act, 1919, the central government retained complete control over all provincial governments. Thereafter a separation of functions as regards provincial transferred subjects has been attempted, but the distinction between central subjects and provincial reserved subjects is admittedly lacking in definition. Much clearer definition and a much closer examination of the relations between the central and local governments would be an essential preliminary to any scheme of provincial autonomy in India. It may further be pointed out that the mere transfer of all provincial reserved subjects would not meet the case. It is exceedingly doubtful if, on examination, it will be found that several of the subjects now classed as provincial could under any

system of provincial autonomy be entirely provincialized. The central government now derives its powers of control over these subjects from the fact that it is still supreme on the reserved side, but with the transfer this control would disappear.

It seems certain that in the event of the transfer of all subjects the existing rule 49 of the Devolution Rules would leave an insufficient control in the central government. In this connection it may be well to remind those who look forward to responsible government both in the central and provincial spheres that the reservation of powers to the central government is certainly not less important in the case of a democratic government. In India the residuary power is with the central government at present, and we think it should probably be retained there.

49. Another essential feature of any such system is the separation of finances between the central and provincial governments. At present under section 20 of the Government of India Act the revenues of India are received for and in the name of His Majesty. It is true that the provinces have been allocated some of those revenues by the Devolution Rules made under section 45A, but it is only the Secretary of State in Council who can be sued under section 32. A local government may raise money under sub-section (1*a*) of section 30 on the security of the revenues allocated to it, but it must do so on behalf and in the name of the Secretary of State in Council. Even in the case of the Union of South Africa where the central government retains much greater control than in other federal constitutions within the Empire, separate provincial revenue funds have been established for the provinces. The revenues allocated to local governments must in fact be separated and held in separate accounts from the central revenues before anything in the nature of provincial autonomy could be set up. So long as the central government is responsible for the provincial ways and means programmes, so long obviously must it retain control in certain financial matters. For full provincial autonomy separate consolidated funds for the provinces would have to be constituted, and, as the right to sue government is recognised in section 32, it would further be necessary to provide that, when the claim, if established, would have to be met from such consolidated funds, the suit would lie against the province.

The existing limitations upon provincial autonomy in regard to the provincial borrowing powers are contained in the Local Government (Borrowing) Rules. In India the central and provincial governments tap the same sources when they go into the money market. It seems therefore clear that, for as long as we can foresee, if a competition in interest rates is to be avoided which would be opposed to the interests of both sides, there must be some control over the borrowing powers of

the provinces. The control would be required to secure co-ordination as to the times when the provinces should go into the market.

50. Before any system of provincial autonomy could be introduced into India the question of the definition of the fields of taxation and legislation would require much closer examination, and the extent to which it would be necessary for the central government to employ its own agents for the administration of its own subjects would become of the greatest importance.

Similarly much more definite provision would be required to provide for the enforcement of the authority of the central government over the provincial governments and the citizens subject to its central laws.

51. These are factors which we think merit consideration before it is assumed that provincial autonomy is in the main a question of political advance which is severable from administrative considerations.

PART III.

DIFFICULTIES ARISING FROM THE WORKING OF THE CONSTITUTION.

52. As we have already indicated the first item in the terms of reference to us requires us to consider all the difficulties or defects inherent in the working of the constitution. We have already alluded to the difficulty experienced in working the constitution owing to the atmosphere in which it was introduced, but we must qualify that statement by admitting that within the legislatures themselves there was at the commencement a spirit of good will. There are, however, several other difficulties for which we can clearly recommend no remedy, and to which we consider it will be convenient to refer before formulating our recommendations.

Finance.

53. We place the question of finance in the forefront of these difficulties. As is well known the allocation of revenues to the various provincial governments was decided in the light of the recommendations contained in the report of the Financial Relations Committee. This separation of the provincial finances from the finances of the central government, which is usually referred to as the Meston settlement, has been effected by the Devolution Rules. There can be no doubt that the basis of the conclusions embodied in that settlement has been seriously affected in certain respects, and as a result the provinces have not been vested with the resources which were anticipated. The difficulty which has arisen has been referred to in the reports of several local governments and also by several witnesses before us. The Madras Government refer to the deep sense of injustice felt with this settlement as contributing to the dissatisfaction felt at the working of the reforms scheme; and they say that unless the financial embarrassments consequent thereon can be mitigated or removed, no changes whether in the direction of extending the sphere of ministerial control or otherwise will result in material improvement. The Bombay Government say that they have never ceased to protest against this settlement; complaints are being perpetually made that the departments controlled by Ministers are being starved; and until the financial arrangements existing between the Governments of India and of Bombay are readjusted, no hopes can be held out of the satisfactory working of the Act of 1919. The Bengal Government say that in Bengal the Meston settlement is one of the main defects in the constitution; it stood condemned from the outset; and to this more than to any other cause, perhaps, may be attributed much of the discontent against the reforms, which prevails even among the more moderate

element. Finally, the Assam Government say that of all the remediable defects which have hampered the working of reforms finance is the most important; if even at this stage the Ministers could be given a surplus, however modest, an enormous improvement in the situation would result.

54. The objections of local governments to the settlement are based upon very different grounds. The settlement provided for the allocation of the same sources of revenue to different provinces. An arrangement which gave land revenue to the provinces and income-tax, except a fraction of the excess over the receipts of the year 1920-21, to the central government might be satisfactory to Madras, but would be equally unsatisfactory to Bombay and Bengal. The settlement also assumed that a sum of 9 crores and 83 lakhs of rupees would be required to balance the first budget of the central government, and this sum was to be found by contributions from the provincial governments. The contributions to be paid by the local governments were fixed so as, it was thought, to leave each province with a balance, but in view of the very different receipts which were given to each province by the allocation of the same sources of revenue to each, the contributions, which it was considered they would be able to afford and which were therefore fixed, varied from 15 lakhs from Assam to 348 lakhs from Madras. It is, we understand, the amount of this annual contribution which forms the basis of the grievance of Madras. When, however, the position of central finances is improved, and it is found possible to forego the provincial contributions, there should, we assume, be little objection to the settlement on the part of that province. The Bombay Government will then, however, only have benefited to the extent of 56 lakhs a year and presumably their finances will not be appreciably improved thereby, and the Bengal Government will only have secured the continued benefit to be derived from the non-payment annually of the contribution of 63 lakhs which they have already been granted for three years.

55. We observe that the central government also has been embarrassed by the state of its finances during the period since the introduction of the reforms in the same way as the provincial governments. The first financial year under the reforms was the year 1921-22, and the first budget was therefore based upon the experience of the year 1920-21. The actual deficits of the revenue as compared with the expenditure of the central government for this and the two succeeding years were as follows :—

1920-21	26.00 lakhs of Rs.
1921-22	27,65 „ „ „
1922-23	15,01 „ „ „

There was thus a total deficit of more than 68½ crores of rupees during these three years. It was only with the budget for the

year 1924-25 that the Finance Member was able to announce an estimated surplus on the working of the previous year, 1923-24. We find therefore that the reforms were started when there were not in fact sufficient funds to provide for the needs of both the central and the local governments, and this was due mainly to financial world conditions and not particularly to Indian conditions. The Meston settlement was framed on the basis that the exchange value of the rupee would equal two shillings, and we are informed that on the basis of the actual charges to be incurred in England which are included in the budget figures for the current year, this means a deficiency in central revenues of about 12¼ crores of rupees and in provincial revenues of about 78 lakhs of rupees as compared with the Meston settlement. The deficiency in central revenues due to this cause is thus well in excess of the total provincial contributions. The provinces also had to meet increases in the costs of establishment rendered necessary by increases in prices which have been estimated as having cost about 10 crores of rupees (including about 1½ crores for the Imperial and Provincial Services) per annum.

56. Though the figures in the preceding paragraph indicate to some extent how much the estimates upon which the Meston settlement was based have been affected, and though the position was, as we have said, that there were not sufficient funds available to meet the needs of both the provincial and the central governments, we agree with the local governments that the difficulty arising from finance has formed one of the main obstacles to the success of the reforms. It is due to it that Ministers have been unable to enter upon a policy of progressive development in the spheres of administration committed to their care. If they had been able to do so, they would have been able to provide an answer to those critics who have reiterated the allegation that the reforms were a sham, and they would also have been able to consolidate their position or else have been required to make way for other Ministers who could have enunciated a policy more acceptable to the councils which would incidentally have assisted in the establishment of the responsibility of the Ministers to the councils. We hope that with an improvement in the finances of the central government it will be possible to begin the work of reducing the provincial contributions. As we have shown, however, this is not likely permanently to meet the needs of certain of the provinces. It is clear that we have not the information upon which to base any recommendations for the revision of the settlement. We consider also that it is probable that an adequate revision will have to await a considerable improvement in the finances of the central government. We think, however, that the settlement should be revised as soon as a favourable opportunity occurs.

Electorate.

57. Another difficulty is to be found in the electorate in India. It is upon the electorate that the whole framework of responsible government must be based, and it is necessary for us to emphasize that there has not been sufficient opportunity yet to train it in the exercise of its responsibilities. The evidence on this point is definite. The existing electorate has been characterised as illiterate and untrained, though we have received evidence to the effect that the electors are able at present to understand broad issues which is their main function and to choose the candidate who in their opinion will serve them best. There are doubtless parts of India where the electorate is more advanced and better educated, but the statement of the United Provinces Government that the electors in the United Provinces are mainly members of an illiterate peasantry with many virtues but not many of the qualities out of which the controlling power of parliamentary government is made is probably accurate not only in that case but in the case of many other parts of India. The education of an electorate so constituted is a matter of great importance and difficulty. That efforts have been made to educate in certain instances is clear, as we have been informed that certain members of the legislatures have addressed many meetings of their constituents. We observe, however, that the two witnesses who appeared before us on behalf of the United Provinces Liberal Association and gave evidence in this respect, are in fact the two representatives cited by Mr. Chintamani in his written evidence as the most notable examples of members who have taken care to retain contact with the electorate. The reports of the local governments suggest that this is somewhat exceptional and there have been few attempts to establish those relations between the electorate and the members of the legislature which exist in countries where parliamentary institutions flourish. There is obviously much to be done in this direction, but it is not a matter that can be provided for by any change in the constitution though it is intimately bound up with its working. We certainly do not suggest that all constitutional advance in India must wait until the electorate has been educated up to the standard of the electorate in Western countries. We cannot deny, however, that the present state of political training of the electorate is an obvious difficulty in the working of the constitution.

Responsible government flourishes in small homogeneous communities.

58. It is a commonplace that in a system of responsible government based upon the model of England each member of the administration is responsible for the discharge of his duties to his superiors in the department and ultimately to the Minister. The Minister himself is responsible to the legislature which may express disapproval of his conduct or his policy; then if the matter is important the Minister resigns,

or, if it is of vital importance, and the Cabinet as a whole supports the Minister, the Cabinet resigns. The legislature itself is responsible to the electorate, and, unless the system of a referendum has been introduced, this responsibility can only be enforced at a general election. It seems clear to us that a system of this kind is most likely to flourish in areas which are comparatively small and of which the inhabitants are largely homogeneous. For, as Lord Bryce says :—" The first and nearest duty of a citizen is to bear his part in selecting good men, honest and capable, to do the work needed by the community, and to make sure that they do it. In a small community * * * * this was a simple matter, because everybody knew everybody else and could see whether the work was being done or neglected." And, again :—" Common sense does indeed suggest to him (the elector) that he should vote for some one he knows and respects personally, but if the electoral area be large there will probably be none such among the candidates."

This brings us to another difficulty in the working of the constitution for which we can clearly devise no immediate remedy. A measure of responsible government has been introduced in the nine Governor's provinces, but these units have been shaped, as explained in the Montagu-Chelmsford Report, by the military, political or administrative exigencies or conveniences of the moment and with small regard to the natural affinities or wishes of the people. Several of the provinces present features rivalling in their heterogeneity India itself. The populations of three of them, Madras, Bengal and the United Provinces, exceed forty millions. We admit that, for administrative purposes when several units are subordinated to a central unit, it is desirable that the number of such units should be small. We are, however, now considering the difficulties in the working of responsible government in India, and we feel that these difficulties are certainly much enhanced by reason of the large size of several provinces, their artificial and unnatural boundaries and the want of homogeneity in their populations. In their picture of the working of the reforms the Government of the Central Provinces have referred to the disruptive tendencies which have been a marked feature of the last four years. They say the rivalry between Berar and the Central Provinces became more marked, and the rivalry between the Northern Hindi-speaking districts and the Southern Marathi-speaking districts was more prominent. This, we consider, is a clear indication of the difficulty to which we are referring, for responsible government predicates a willingness of the citizen to co-operate in the work of government, and the difficulty of securing that co-operation in such circumstances is obvious. It is not a part of our functions to suggest any revision of the existing provincial boundaries, and we agree with the

authors of the Montagu-Chelmsford Report that a redistribution of provincial areas cannot be imposed upon the people by official action. It does, however, appear to us that this is one of the questions which will probably have to be considered in connection with any considerable constitutional advance, and it was pointed out to us by several witnesses that it was in fact a difficulty in the working of the existing constitution. It may be thought that the division of India into smaller and more homogeneous units will involve enhanced expenditure on the provincial governments, and we admit that such financial considerations are of great importance. It appears possible, however, that any increase of cost might be mitigated by a system of deputy governorships. The arrangements which might be introduced with a system of sub-provinces constituted under section 52A, sub-section (1), of the Government of India Act have not, however, been worked out in detail, and we consider it would be premature for us to commit ourselves to any definite pronouncement on this point particularly in view of the necessity for the consent of the people to any redistribution of provincial areas to which we have referred.

Communal differences.

59. Another difficulty in the working of the constitution is the existence of communal differences. We refer not only to the communal differences between the two great religious communities of India, which are, however, perhaps the most outstanding, but to the differences which exist between the members of the other communities, Brahmins and Non-Brahmins, the Sikhs, Parsis, Jains and Christians, as well. We do not desire in any way to exaggerate the importance of the differences, though the evidence to which we have referred in paragraph 41 above in regard to communal representation is an indication of their importance. We are also most desirous that we should say nothing in our report which would in the slightest degree tend to exacerbate the differences which do exist. As practical men we must, however, recognise that the inter-communal friction which has always been evident in India, but which has perhaps been more frequently so during the last few years, is not conducive to the success of responsible government. It is more than possible that the view which has been indicated in some of the evidence produced before us that the introduction of the reforms scheme has contributed to the growth of such friction is not without foundation. Other causes such as the *Shudhi* and *Sangathan* movements may have contributed more immediately to that growth, but the suggestion would appear to be that the desire of the different communities each to strengthen its own position has been an underlying and deeper cause. We do not propose ourselves to explore this evidence more fully. We, however, are not without hope that the leaders of all communities

will continue, in the interests of the constitutional development in India which is our immediate concern, to strive to develop unity in place of discord, and thus prove that the acuteness of the existing communal tension is but a temporary phase. For, so long as sectional interests are preferred to the interests of India as a whole, the growth of self-government must inevitably be retarded.

Difficulty arising from elected majorities in the Indian legislature and in the provincial legislative councils.

60. As a conclusion to this part of our report we refer to a difficulty inherent in the constitution. It was intended that the administration of transferred subjects should be conducted on the basis of the responsibility of the Ministers to the councils and of the members of the councils to the electorate. In the administration of central subjects and of the provincial reserved subjects it was not, however, intended that the government should be responsible to the legislatures, though a large measure of financial control has been vested in them in regard to such subjects. In the legislatures an elected majority was provided and, as is only natural, that majority is permanently critical, and in the second councils in certain provinces has been definitely obstructive to government. Colonial experience was of course well known to the authors of the Montagu-Chelmsford Report and to Parliament. It was indeed doubtless with due regard to that experience that provisions were included in the constitution of an affirmative nature as well the normally negative provision of the veto. These provisions related to the powers of the legislature both in regard to legislation and in regard to the appropriation of supply. It was intended also that those provisions should be used, but as stated by the Government of Assam "'arbitrary' is the mildest epithet applied to a Governor who certifies a demand; he is accused of flouting the wishes of the representatives of the people and goading them to revolt." The dictum of the Joint Committee that these powers were intended to be real is thus overlooked, whether the powers are exercised by the Governor in regard to the provincial councils or by the Governor General in regard to the central legislature. Though in the central government at any rate the instances in which these powers have been used have been very few indeed, yet we consider that these provisions in the constitution must inevitably contribute to the difficulty of its harmonious working, however essential their existence may be.

PART IV.

RECOMMENDATIONS.

61. Our recommendations for the remedying of defects and difficulties in the working of the constitution are set out in the following paragraphs.

A.—*The Electorate.*

Franchise.

62. We begin with the electorate for the provincial councils and for the central legislature. We have summarised in Appendix No. 3 the most important statistics in regard to the electorate for the provincial councils and the Legislative Assembly for each province at the date of the general elections of 1923. In this statement we have excluded the numbers of electors for special constituencies, because the latter are usually electors for general constituencies as well. The minimum age for electors for the provincial councils and for both chambers of the Indian legislature is 21 years. The Indian Census tables do not, however, give the male population of 21 years and over, and we have accordingly included for purposes of comparison the total male population and also the total male literate population of 20 years of age and over. It will be observed that for the provincial councils the male electorate is normally about 10 per cent. of the male population of 20 years of age and over. In Burma the percentage is, however, nearly 50, which is due to the lower franchise adopted in that province, whereas in Bihar and Orissa and the Central Provinces the percentage is only about 4, which is probably mainly due to the smaller proportion of the people in those provinces who reach the standard adopted for the franchise; the standard also appears, on the whole, to be slightly higher in those provinces than in others. Although the census figures in Appendix No. 3 show that the male literate population of 20 years of age and over is greater than the male electorate except in the United Provinces and the Punjab, we must emphasize the fact that the knowledge necessary to qualify for classification in the census tables as literate is very small. The total male electorate for the general constituencies for the provincial councils was 7,414,000 and for the Legislative Assembly 984,000. The percentage of electors (generally more than 40 per cent.) who voted in the contested general constituencies at the last general election was, we consider, having regard to all the circumstances, satisfactory, and in that respect a great advance on the first general election.

63. We have received conflicting evidence as to whether the time is yet ripe for a general broadening of the franchise. For

example, Mr. Chintamani and Mr. Chitnavis have suggested that such action should be taken now, whereas Mr. Kelkar is averse to such action at present, and Mr. Ghuznavi suggests that the franchise qualification should either be raised or a system of electoral colleges for the election of representatives should be instituted. The Bihar and Orissa Ministers state that the franchise is so low as to lead to corruption and demoralization. The local governments also hold [illegible] opinions. The Madras Government say that the extension of the franchise is fundamentally connected with any steps that may be taken to determine the future of the provincial governments; whereas the Central Provinces Government say that the question was examined exhaustively only 5 years ago and nothing has occurred to justify any drastic change in the decisions then reached, while the Bihar and Orissa Government say that the existing electorate is entirely ignorant and the extension of the franchise to a still lower level of intelligence will simply be to intensify confusion and to play into the hands of the unscrupulous demagogue. We have carefully considered these conflicting views, and we have decided that we are unable to recommend any general modification of the franchise in either direction. We have already indicated our opinion as to the general character of the electorate, but we are not prepared to advocate any raising of the franchise qualification or the introduction of a system of electoral colleges. We understand that where the latter system has been adopted, its success has generally been doubtful. We consider that the real remedy is experience in the exercise of their powers by the electors, which may lead eventually to an appreciation of the value and result of their votes, and thus secure responsibility in the exercise of the franchise. We affirm the principle that the franchise should be as low as possible, provided that the electors have a proper appreciation of their duties and responsibilities in its exercise. At present, however, the capacity of the elector is, we believe, on the whole mainly confined to a capacity to choose between the personal qualities of two or more candidates. If this is so, there can be no doubt that a general widening of the franchise, which is not accompanied by a corresponding increase in the number of seats, would enhance the difficulty, because it would largely decrease the proportion of the electors who are acquainted with any of the candidates; we are not prepared to recommend any great increase in the number of seats in the various legislative bodies.

Representation of the depressed classes and of factory labour.

64. We consider, however, that an exception to our general finding should be made in the cases of the representation of the depressed classes and of factory labour. There is a very general recognition of the fact that it is desirable that

both these interests should receive further representation, and we are in agreement with this view. In the constitution of some of the provincial councils the representation of the depressed classes and of the labouring classes by nomination is already provided for, but we do not consider that this representation is adequate. So far as the depressed classes are concerned we consider that unless in any particular case a local government is prepared to recommend a system of election, the further representation which we consider necessary can only be secured by nomination. In regard to urban factory labour we consider that it would be preferable to provide for the further representation by election, but in existing circumstances local governments may be compelled to provide for such representation by nomination. The rules already permit the Governor of Madras to provide by regulation for the selection of persons to be nominated to represent the depressed classes by the communities concerned, but we understand that no action has been taken under the provision. If increased representation by nomination becomes necessary the provisions of the Act which place a minimum limit upon the proportion of elected members in each legislative body may in certain cases require amendment. We have accordingly in the statement included in this paragraph indicated the limit which these provisions of the Act place upon an increase in the number of nominated members of the legislative body concerned on the assumption that the numbers of elected members remain unchanged. The statistics which we have given of the population in each province belonging to the depressed classes is the rough estimate of the minimum numbers given in the last census report, but the mere figures do not really form a proper measure of the magnitude of the problem in each province. We are unable to include any statistics of factory workers, because the census report stated that the attempt to distinguish factory and home workers in the textile industries which had been made in one province was found on analysis to have given figures of very little use. We consider that some definite representation of the labouring classes is also required in the Legislative Assembly, because industrial laws are subject to legislation by the Indian legislature, and it is perhaps probable that for some time any legislation on a considerable scale which may be undertaken will be in the central legislature. We consider it is unnecessary to provide for such representation in the Council of State. We have omitted any Burma statistics from the statement as we understand that the problem of the depressed classes, as it exists in other Indian provinces, is unknown there. The Burma rules provided for one nominated member of the labouring classes. We have no precise recommendations to make as to the additional representation which should be granted, as we consider that each

local government (including Burma) should be asked to formulate proposals.

Legislative Body.	Population of depressed classes in thousands.	Existing provision for representation by nomination.		Limit of increase in number of nominated members.
		Depressed classes.	Labouring classes.	
1	2	3	4	5
Madras	6,372	5	0	13
Bombay	2,800	1	1	11
Bengal	9,000	1	2	22
United Provinces	9,000	1	0	19
Punjab	2,893	0	0	8
Bihar and Orissa	8,000	2	1	5
Central Provinces and Berar	3,300	2	0	7
Assam	2,000	1	1	2
Legislative Assembly	...	0	0	0

Rural franchise in the Punjab.

65. The only other specific suggestions which we need mention in this connection are those of the Punjab Ministers who recommend the reduction of the qualification for the rural franchise in that province from assessment to Rupees 25 land revenue to assessment to Rupees 5 land revenue and also the enfranchisement of the agricultural tenants. Tenants with a right of occupancy under the Punjab Tenancy Act of 1887 in respect of land assessed to land revenue of not less than Rupees 25 per annum are already enfranchised in the Punjab. The Ministers do not give any specific information as to how they would further enfranchise the tenants, nor do they indicate what would be the probable result of making the change which they recommend as regards assessment to land revenue on the number of electors for the rural constituencies. The Punjab Government state that there is no problem of tenancy legislation in the Punjab, and a large addition to the agricultural vote might compel an increase in the number of rural constituencies and add to the difficulty in which urban representation now finds itself. We are for these reasons unable to endorse the recommendations of the Punjab Ministers.

Women's franchise.

66. The Joint Committee considered that it should be left to the legislative councils to settle by resolution whether women should or should not be admitted to the franchise. The Committee stated that it seemed to

them that the question went deep into the social system and susceptibilities of India, and to be one which could only with any prudence be settled in accordance with the wishes of Indians themselves as constitutionally expressed. In several of the provincial councils, but not all, and in the Legislative Assembly the necessary resolutions to remove the disqualification for being an elector which is due to sex have been passed. The effect of these resolutions is that women are not disqualified by their sex from exercising the franchise in constituencies of those councils, and also in constituencies of the Legislative Assembly belonging to those provinces. So far as all provinces, except Burma, are concerned we would retain the general position in regard to the removal of the disqualification from being an elector, namely, a resolution must first be passed in the legislative council after not less than one month's notice has been given. We observe, however, that the electoral rules for the Legislative Assembly do not provide for the removal of the disqualification in the case of the two constituencies of Delhi and Ajmer-Merwara. This arises from the fact that the passing of a resolution in the Legislative Assembly only has the effect of removing the disqualification for registration as an elector for women who are not disqualified for registration as electors for the legislative councils of their province, and there are no legislative councils for Delhi or Ajmer-Merwara. We consider this to be a *casus omissus*, and we would rectify it by the inclusion of a proviso on the lines of the provisos in the Electoral Rules for the provincial councils

Eligibility of women to be members of the legislatures.

67. The question of the eligibility of women to be members of the various legislative bodies in India has also been raised. Indeed in this connection we received a deputation of ladies who urged their case upon us with much skill. Except for the Burma Legislative Council the rules at present prohibit this. The difference between Burma and the remaining provinces in this respect is due to the exceptional position which it is understood is occupied by women in the life of that province. The reforms were introduced there two years after their introduction in India and after an enquiry by a special committee. On the recommendations of that committee no disqualification on account of sex for registration as an elector was introduced in the Burma Electoral Rules, and it was further provided that by the passing of a resolution in the council the disqualification from being a member of the council might be removed. We consider that it would be in conformity with the dictum of the Joint Committee, which we have quoted in the preceding paragraph, to provide similarly in the Electoral Rules for each provincial council for the removal of the disqualification from being a member of the council, and further in

the Electoral Rules for each chamber of the Indian legislature for the removal of the disqualification from being a member of the chamber concerned for a constituency in a province in which sex is not a disqualification for such membership. The provision should apply both to elected and nominated members of all the chambers, and provision should be made for the Delhi and Ajmer-Merwara constituencies of the Legislative Assembly on the same lines as for the provincial councils. We would require that the resolutions to be passed for the purpose should be in addition to the resolutions necessary for the removal of the disqualification for being an elector in any of the legislative bodies concerned.

B.—*The Provincial Legislative Councils.*

Constitution of the provincial councils.

68. We have received the following recommendations in regard to the constitution of the provincial councils which we consider may be conveniently dealt with together as they are connected one with another.

(i) At the present time the landholders in the United Provinces have been given special representation in six seats divided between three constituencies. Of these seats four have been assigned to the Taluqdars constituency, the electors of which consist of the members of the British Indian Association of Oudh, and the remaining two seats are assigned to the landholders of Agra divided territorially into two constituencies. Though Mr. Chintamani recognises that the landlords have secured the majority of the seats allotted to rural areas, he does not suggest that this special representation should be withdrawn. He considers, however, that the seats should be redistributed as follows :—

(*a*) two to the members of the British Indian Association;

(*b*) three to the landholders of Agra; and

(*c*) one to the landholders of Oudh who are not members of the British Indian Association.

(ii) The Bihar Provincial Kisan Sabha recommend that the special landholders' electorates should be abolished or in the alternative the tenants should be given special representation.

(iii) Mr. Chintamani recommends that the number of seats for urban areas should be somewhat increased without curtailing the number allotted to rural areas, with the motive not of securing that the towns shall prosper at the expense of the villages but of improving the legal position of the tenants.

(iv) The Hon'ble Sir Abdur Rahim recommends the abolition of all special constituencies except those for Europeans and the Universities.

(v) Mr. Kelkar is opposed to the special representation accorded to the landholders, and he is not prepared to introduce as a counterpoise special representation for the tenants. On the other hand, for other reasons, he would abolish the urban representation in the Central Provinces for towns other than Nagpur and Jubbulpore.

(vi) The Central Provinces Government recommend that an additional constituency should now be constituted for the Mandla District. The Local Self-Government Act has been extended to this district and the local government therefore consider that the inhabitants may now be given the right to vote for the local council. They would leave Mandla town in the separate urban constituency which is comprised of small towns in the Jubbulpore Division, and they would delete the entry in the rules which provides for the representation of this District by nomination.

(vii) The Central Provinces Government also make a minor recommendation for the redistribution of the area of the Buldana District in Berar between the two constituencies into which that district is divided.

We do not consider that it is necessary for us to make any recommendations regarding the seventh proposal which will doubtless be considered by the Government of India. The remaining proposals are clearly to some extent mutually conflicting. We have not sufficient information to justify us in recommending the redistribution of the landholders' constituencies in the United Provinces. We agree also with Mr. [illegible] that special representation for the landholders should be retained for the present in view of the fact that the Government of the United Provinces in another connection observe that the landholders have been a steadying influence in that province; they have filled a large part in its economic and political life; and their disappearance or impoverishment would gravely impair those forces upon which the stability of the country depends. We are also not prepared to recommend that special representation for tenants should be provided. It is, we think, doubtful whether such a recommendation is feasible, and in any case we consider that normally the tenants will be able to secure sufficient representation through the general constituencies. So far as Sir Abdur Rahim's recommendation is concerned, we observe that as we would retain landholders' seats we are also not prepared to recommend the abolition of other special seats. In regard to Mr. Kelkar's recommendation we agree that normally a number of disconnected small urban units does not constitute a suitable electoral unit. We are, however, not prepared at present to recommend any modification of the system. We agree with the Central Provinces Government that

an additional constituency comprising the Mandla District may now be created. We understand, however, that one reason why Mandla Town was included in the urban constituency of small towns in the Jubbulpore Division of the Central Provinces was the fact that the Mandla District was not to be represented in the council by election, and, for the reason indicated in our remarks regarding Mr. Kelkar's recommendation, the question of whether this town should not be excluded from the urban constituency to which we have referred and be included in the proposed Mandla District constituency appears to be worthy of consideration. As observed by the Government of the Central Provinces it will be unnecessary to continue the provision for nomination of a member to represent the Mandla District which is now contained in the rules. We consider, however, that these are all questions which we may suitably leave to the decision of the Government of India.

Communal representation.

69. A question of much greater importance is undoubtedly that of communal representation in the councils. In this expression we include not only the communal representation which has been provided for the Muhammadan, Sikh, Indian Christian, European and Anglo-Indian communities (and. in Burma, the Karen and Indian communities), but also the modified system of communal representation which has been provided for the non-Brahmin community in the Madras, and for the Mahratta community, in the Bombay councils. We have received conflicting evidence on this question from the witnesses before us which we consider, it is unnecessary for us to summarize in detail. On the one hand it has been urged that the election of members on a communal basis is a very serious obstacle in the way of constitutional advance. and further that so far as the Mahratta community is concerned—and we presume similar arguments would be adduced in regard to the non-Brahmin community—the experience of the elections has indicated that the system of reserved seats is unnecessary, as the communities concerned would return a due proportion of the members without any such reservation of seats. On the other hand the supporters of the existing provisions have been equally emphatic in their condemnation of any attempt to tamper with the protection which they consider is afforded to the communities concerned by these provisions. The latter view is particularly pressed by the Muhammadan community. It must be admitted that in principle these provisions are open to constitutional objection, and most of us look upon them as an obstacle to political advance, but we consider that the abolition of any special communal electorates, and in this we include reserved seats, is quite impracticable at the present time. The objections of the

communities concerned are, in our opinion, far too deep-rooted to enable us to justify any recommendation in this respect. We are not prepared either to recommend even the substitution, in whole or in part, of reserved seats for separate electorates. It is true that it may be urged that this would facilitate the eventual abolition of separate communal representation. On the other hand, however, it means that the representatives of the communities which attach particular importance to the existing provisions will be elected largely by the suffrages of other communities. We are also unable to accept the recommendation of Mr. Sapre that the present system should be replaced by a system under which the existing quota of communal members would be elected from as wide a constituency as possible. The object of the recommendation is to improve the quality of the members by enlarging the field of choice, but in existing circumstances we consider that this would place too great a strain upon the capacity of the electorate. We consider that great care should be exercised before any extension of the existing scope of the system of separate electorates and of reserved seats is permitted. We have admitted the necessity in present conditions of retaining such provisions in the case of the communities which have already received favoured treatment in this respect. We are therefore unable definitely to preclude an extension of the provisions in the case of any particular community which may be able to furnish substantial grounds for such an extension. We trust, however, that no such extension will be found to be necessary, and in our opinion before it is permitted any community should be required to prove that it will suffer very appreciably if the existing arrangements continue.

Plural constituencies.

70. Mr. Ghuznavi has recommended that plural constituencies should be abolished. On the one hand such constituencies may facilitate the obtaining of representation by different communities which is an advantage in a country where the population is so heterogeneous as India. On the other hand by increasing the size of the constituencies they tend also to increase the difficulties due to the want of training of the electorate. We consider it is impossible to suggest the formulation of any rule of universal application in the existing circumstances of India, and we are therefore unable to make any recommendations in this respect.

Qualifications for being a candidate for election.

71. At present it is provided in all the rules that a candidate for election shall be at least 25 years of age. This applies to both chambers of the central legislature also. We have received some recommendations that this age should be increased, but we are unable to support them. We observe that

in England a minor was disqualified for election to the House of Commons by a statute of William III, but this is the only restriction on account of age and in some cases breaches of it have been connived at. We would mention in this connection Mr. Kelkar's recommendation that candidates for election should be required to produce proof of educational and administrative qualifications. We consider that it would be impracticable to include such a provision in the rules. It would at least necessitate further consequential provisions in regard to the power, or otherwise, of Returning Officers and of Election Courts to question the evidence produced as to such qualifications.

The European Association also refer to difficulties which have been experienced in the selection of suitable European representatives on the councils because of difficulties attendant on nomination during the absence of a suitable candidate from India on leave and because of the six months residential qualification. In the amendments of the electoral rules which were made in 1923 the absence of a candidate from India at the time of nomination or election would appear to have been contemplated. All that is necessary is for a candidate to sign a nomination paper before he leaves India and to leave it with his proposer or seconder. So far as the six months residential qualification is concerned, the recommendation is that an all-India residential qualification which should not be affected by temporary leave of absence from India be generally adopted for European representatives. The circumstances of these special constituencies are exceptional, and we think in their case the suggestion should be given effect to. The question of the residential qualification of candidates is also raised by the Punjab Ministers who say that the rules should be modified so as to secure that the townbred educated people and the capitalist do not monopolize the councils. The residential qualification for candidates for election to the Punjab council was removed in the revision of the rules which preceded the general elections of 1923, and we should hesitate to suggest its restoration. The Punjab Government also in our opinion give a complete answer on this point, when they say that for the first general election it gave the rural representatives an entree from which they have not been dispossessed, and there appears to be no adequate reason for restoring it.

Disqualification from being a candidate for election.

72. The Hon'ble the Raja of Mahmudabad suggests that convictions by a criminal court for offences not involving moral turpitude should not be a disqualification for membership of the legislative bodies in India. At present any conviction which involves a sentence of more than six months constitutes a bar to election, unless the offence has been pardoned, for a period

of five years from the date of the expiration of the sentence. We are not prepared to recommend the introduction of any provisions in the rule which would differentiate between offences involving and offences not involving moral turpitude. We consider that the attempt to provide such a distinction is unsound in theory and almost impossible in practice. We, however, consider that it is inadvisable to require that the offence should be pardoned before the disqualification is removed. The disqualifications under other provisions of the rule can be removed by orders of the local government in this behalf, and provided arrangements are made to secure that there shall be uniformity of action in regard to particular persons in different provinces we consider that similar provisions should suffice in regard to this disqualification also. We also consider that the period of six months is too short, and that it should be increased to one year. This period has a precedent in the similar provision in the South African constitution.

Appointment of nominated members.

73. This brings us to those members of the legislatures who are not elected members, and in respect of them we have but few observations to make. The non-elected members consist of the non-official and official nominated members and occasionally, for particular legislative proposals, of nominated experts, who may be either officials or non-officials. In the existing circumstances of India, nominated non-officials are required in order to secure the representation of classes and interests which may be unrepresented or inadequately represented by the elections. At present these members are nominated by the Governor, and we agree that the Governor must remain responsible so as to secure that the main object of such nomination in the constitutions of the councils is not defeated. We are accordingly unable to support the recommendation of the Indian Members of the Bombay Executive Council and the Bombay Ministers that these members should be nominated by the government as a whole. There is no provision in the Act corresponding to the provision in section 72A to enable experts to be nominated to be members of either chamber of the Indian legislature. If the expert whom it is desired to nominate to either chamber for the purpose of a particular Bill is an official it is always possible for government to direct another official member to resign so as to enable the expert to be nominated in his place, but this is not possible in the case of a non-official expert. Even in the case of an official expert also we doubt whether it can always be advisable to nominate him to be a member of the chamber concerned for all purposes. We imagine that provision for such experts was omitted from the Act by an oversight, and we recommend that the Act should be amended to enable experts to be nominated to either chamber

of the Indian legislature in the same way as they may be nominated to a provincial council. Such experts should only, as in the case of the provincial councils, have the rights of members in relation to the Bill for the purposes of which they were nominated to be members.

The official bloc.

74. We have received several suggestions in regard to the presence of official nominated members in the provincial councils. They usually take the form that the officials should not be members or, in the alternative, that they should not vote on the transferred side. In regard to these suggestions there have been allegations that Ministers have been frequently retained in office merely by the votes of the official members. So far as the Punjab council is concerned there is, in the written evidence of Sir John Maynard, an interesting analysis of the voting in important divisions affecting transferred subjects. It will be observed that out of the 15 divisions referred to, the official vote determined the result in 8 instances. So long as there are practically no parties, except the Swarajist, united by strict party discipline in India, and particularly so long as the Ministers' main support is obtained from members loosely grouped who do not even form a majority in the council, such a result is to be expected. We are unable, however, to support the view that officials should be excluded from the councils or that they should not vote on questions relating to transferred subjects. Had dyarchy in the legislature been established, and had legislation affecting the transferred side and the appropriation of transferred revenues been assigned to a transferred legislature, officials would not have been included amongst the members of that legislature. It may be that this would have encouraged the growth of the responsibility of the Ministers to the council. We have, however, a system of single provincial legislatures, and, as the legislature deals with reserved as well as with transferred subjects, we consider that officials must be members. So long also as they are members we are agreed that they must have the full rights of members. We recognise also that in the circumstances to which we have referred in paragraph 60, government must have the power to direct its officials as to the manner in which they shall exercise their votes upon particular questions before the council.

Miscellaneous suggestions regarding elections, election offences, and the like.

75. There are certain further miscellaneous suggestions relating to elections, election offences and the like, which we may summarise as follows :—

(i) Mr. Ghuznavi suggests that the arrangement by which an illiterate voter whispers to the polling officer the

name of the candidate for whom he wishes to vote has been abused, and some other system of recording votes in such cases should be introduced.

(ii) Mr. Ghuznavi suggests that it should not be an election offence, either to use hired conveyances or to supply refreshments.

(iii) The Parliamentary Muslim Party of the Legislative Assembly suggests that it should be illegal for any party or organization belonging to another community to interfere with the election in any Muhammadan electorate. In his oral evidence the representative of the Party indicated that the interference complained of would extend to the payment of the election expenses of a candidate by a mixed Hindu-Muhammadan party organization.

(iv) The Bengal Government say that it is not clear whether Commissioners appointed to hold an enquiry into an election petition are required to submit a report in regard to an election petition which has been withdrawn; and further urge that there should be some restriction upon the power of electors to submit under rule 48 a point regarding the interpretation of the Electoral Rules for the decision of the Governor.

(v) Sir P. C. Mitter recommends an addition to the oath now required from members before they take their seats to the effect that they will, to the best of their ability, try to work the constitution and not paralyse the administration by obstructing its working. He would allow petitions to be filed before a special tribunal alleging that this oath had been broken, and on a finding in that sense would allow the tribunal to remove the member from his seat.

As regards the first suggestion, apart from certain prescriptions in the rules, arrangements as to the manner in which votes are to be given by voters generally and particularly by illiterate voters or by voters suffering from a physical or other disability is a matter of regulation, which can be varied by the local government. The arrangements in regard to illiterate voters do in fact vary from province to province. We note that in the rules under the Ballot Act the presiding officer at a polling station is required, *in the presence of the agents of the candidates*, to cause the votes of such persons to be marked on the ballot paper in the manner directed by the voter. If the candidates for election in India arrange for the presence of the one representative they are usually allowed at each polling station, and this procedure is adopted, the difficulty referred to by Mr. Ghuznavi should be surmounted.

As regards election offences the provisions in the rules follow generally the English law on the subject with certain omissions. For example, the prohibition of the hiring of conveyances repeats in substance the English law contained in section 14 of the Corrupt and Illegal Practices Prevention Act, 1883. In India, as in England, it is possible for the candidate to convey voters to the poll in conveyances lent gratuitously, and for which the owners meet all charges, provided the conveyances are not usually kept for the purpose of letting on hire. We consider that it is a sound rule in these matters to follow generally the English provisions, which have been adopted after long experience, and we are unable to recommend any modification of the existing provisions in the Electoral Rules on the lines of the second suggestion of Mr. Ghuznavi.

We are also unable to support the suggestion of the Parliamentary Muslim Party which we have repeated above. Such a rule would in our opinion tend to prevent the constitution of parties except on strictly communal lines, and it would thus not be calculated to promote the development of responsible government in India.

We fear we have failed to grasp the first point made by the Bengal Government which is summarized in the fourth suggestion above, and we are not prepared now to make any specific recommendations regarding the second point included in the same suggestion. We think, however, that it is a matter which might be considered by the Government of India.

Finally, we are satisfied that the fifth suggestion, which was made by Sir P. C. Mitter, is impracticable. The line between constitutional obstruction of the policy of the Ministers and the obstruction which Sir P. C. Mitter seeks to prevent is so difficult to draw that we think the proposed tribunal would be set a most difficult, if not an impossible, task in arriving at a finding upon any petition filed before them under the suggested provisions.

The President.

76. Two *ex*-Ministers from Bengal have recommended that the period for which the Presidents of the council are to be appointed by the Governor should be extended. In one case the recommendation is that the extension of the period should be for four more years and in the other case for the life of two more councils. The period of appointed Presidents is now rapidly drawing to a close, and we are not prepared to recommend that a provision deliberately inserted in the law should be altered to meet possible difficulties. When a President of a council has been elected and takes office, the question will arise as to whether this office will be an office in the service of the Crown in India acceptance of which will involve the vacation of the member's seat in the council. The Madras Government state that doubts have arisen also as to whether the Deputy President and also

Council Secretaries accept office on appointment. In our opinion acceptance of none of these appointments should be regarded as acceptance of office within the meaning of sections 63E and 80B of the Act. If there is any real doubt on the question, this could possibly be settled by the amendment of the Non-official (Definition) Rules, and we commend this point to the consideration of the Government of India.

77. We turn now to the provisions relating to the exercise of the powers of the local councils, and in this connection we shall refer to points raised in connection with the following matters :

(*a*) The asking of questions;

(*b*) Resolutions and other motions;

(*c*) Legislation; and

(*d*) The appropriation of supplies.

There is, however, a preliminary general observation contained in the evidence of Mr. Kelkar to which we will first refer. He stated that a great deal of useless work, which is not at all of provincial importance, is brought before the council in the shape of questions or resolutions, and that if this tendency shows signs of increase, the rules will have to be amended with a view to restrict the council work to matters of provincial importance or to such other matters as involve broad questions of principle and policy. In our opinion, this is a general criticism of representative government which no amendment of the rules will meet, and its remedy is to be found only in the good sense of the legislature itself and in the exercise of the power of the Chair.

Questions.

78. The Madras Government suggest that the legislative rules should be amended so as to restrict the right of putting supplementary questions to starred questions only. They also recommend that the number of starred questions which a member may ask at one sitting of the council should be limited. We consider that this suggestion relates to a matter of procedure which should be settled by the standing orders of the council. A witness has also suggested that a Governor should have no power to disallow questions or resolutions or motions of adjournment. In regard to questions the power of disallowance is primarily in the President, and the Governor only decides doubts as to whether a question does or does not fall within the limited categories of questions which may not be asked. In the case of resolutions and motions for adjournment, we consider that it is not possible to cast upon the President the duty of deciding that a resolution or motion cannot be moved without detriment to the public interest or whether a matter is primarily the concern of one government or another. We are therefore unable to support this suggestion.

Resolutions.

79. The suggestion that resolutions adopted by the councils should be binding upon government, which has several times been made in the past, has been repeated by witnesses before us. We have no hesitation in rejecting the suggestion, whether it is applied to reserved or to transferred subjects. A resolution should be an expression of the view held by the local council upon a particular subject. We believe that in no legislature do resolutions bind the executive, and we are further of opinion that no government while holding office could reasonably be compelled to give effect to resolutions of which it did not approve.

Other motions.

80. We now come to the important point of the manner in which the responsibility of the Ministers to the local councils is to be enforced. It is of the essence of a system of responsible government that the Minister shall be responsible to the council and the members of the council shall be responsible to the electorate. At present the local councils may definitely control the action of the Ministers by means of legislation. They may also control their administration by refusing them supplies or by moving the reduction of their salaries. The council, however, normally exercises its powers of appropriation only once a year, and we consider that some further procedure is required. The existing rules appear to us to be defective in this respect, as they do not provide for motions of no confidence and other motions of a similar nature. We must not, however, place the Ministers in such a position as would compel their resignation on all occasions when criticisms of their policy are endorsed by the local council. In our opinion the rules should provide for two classes of motions :—

(*a*) a motion of no confidence ; and

(*b*) a motion questioning a Minister's policy in a particular matter.

The former motion, if carried by the council, should necessarily involve the resignation of the Minister, or of the whole Ministry if it holds itself to be jointly responsible in regard to the particular question. The carrying of a motion falling within the second class should not necessarily involve the resignation of the Minister. It should depend upon the magnitude of the question in issue and the importance which the Minister attached to his policy in regard to it. We consider that it will further be necessary to provide that such motions are not frivolously moved, but that when set down on the paper they should come up for discussion at an early date. We do not think

that there should be any right of immediate discussion or even of having them set down on the next business day, as we think it desirable that a few days should elapse before the motion is discussed. For these purposes we would therefore provide, in analogy with the provisions in the standing orders relating to motions for the adjournment, that if the person who gives notice of the motion is able to show that he has the support of a prescribed number of the members of the council who are present, the President shall direct that the motion shall be included in the list of business on a day not more than 10 days after the date of notice. It will be desirable to prescribe the number of members whose support shall be necessary before the President is required to fix a day for the discussion of the motion. We consider that for this purpose the member who desires to move the motion should show that he has the support of about one-third of the number of members of the council. This is larger than the support required on a motion for the adjournment, but we think the increase is in the circumstances justifiable. We later make a further recommendation for a motion for a nominal reduction of a Minister's salary.

Formal motions.

81. The Madras Government have also recommended that the rules should be amplified so as to provide for formal or ceremonial motions. In our opinion the rulings which have been given by the various Presidents of the councils should have settled the question of the admissibility of such motions by now, and we think it probable that the various Presidents will soon be in agreement in this matter. We are therefore not prepared to make any recommendations in this respect.

Previous sanction to provincial legislation.

82. The principal question which has been raised in the evidence before us in regard to the legislative powers of the councils is the restriction upon those powers due to the requirement of the previous sanction of the Governor General. We have already in the first part of our report alluded briefly to the evidence in this respect. It has been suggested that the provisions requiring previous sanction for legislation dealing with provincial subjects should be repealed, and also that previous sanction should only be required for legislative proposals dealing with provincial subjects which are *specially reserved* for Indian legislation. Particular objection, moreover, has been taken to the requirement of previous sanction for amendments proposed to Bills which have already been introduced in the council and have received sanction. We have carefully considered this important question. It appears to us to be necessary either closely to define the legislative spheres of central and local legislatures or else to retain the doctrine of

previous sanction. The experience of certain federal constitutions in which there has been an attempt to define closely the legislative powers of the central and local legislatures indicates the difficulty which arises if this course is followed. We understand in fact that this is one of the reasons why the doctrine of previous sanction was maintained in India. In our opinion even when the spheres have been more closely defined, some provisions regarding previous sanction will be necessary. Such provisions would apply, for example, to provincial legislation affecting the central legislative sphere. The legitimate exercise of the powers of the provincial legislatures would be unduly hampered without such provisions, and the central government might, on the other hand, be embarrassed for a considerable period by the enactment of laws until their validity could be impeached through the Courts. Our recommendations in regard to the separation of functions will slightly reduce the number of cases in which sanction is necessary, but we are not prepared at the present time to recommend any further attempt to define the legislative spheres. We are further agreed that if the doctrine of sanction is maintained it is essential that sanction should be required not only for Bills to be introduced but also for amendments proposed to such Bills. Otherwise amendments may be moved in a local council and carried which would make the sanction provisions nugatory. We think, however, that as non-official members cannot be expected to be familiar with the law of sanction, local governments should as a matter of course forward Bills and amendments promoted by non-official members for the consideration of the sanctioning authority. This will not prevent a private member endeavouring to obtain the necessary sanction himself if he desires to do so.

83. Though these are our general conclusions on this question, nevertheless, we support the view that the existing law is unduly stringent in some respects and possibly places greater restrictions on the sphere of provincial legislation than was foreseen or intended. We understand indeed that this view is accepted by the Secretary of State, by the Government of India and by the provincial governments. The very wide scope of the existing law of sanction is in fact clearly indicated in the evidence of Mr. Spence, who has informed us that,—" Experience has shown that all Bills of any magnitude, whatever their subject-matter, will inevitably contain provisions in respect of which previous sanction is required under one or other of the clauses contained in sub-section (3) of section 80A,—clauses (*e*), (*f*) and (*h*), being those which have the widest operation." Under the existing provisions it is in fact clear that provisions in provincial laws which have really become stereotyped require previous sanction. Mr. Spence has told us that the Government

of India have proposed that a proviso should be incorporated in sub-section (3) of section 80A in the following sense :—

" Provided that nothing hereinbefore contained shall be deemed to prohibit the local legislature of any province from making or taking into consideration, without the previous sanction of the Governor General, any law satisfying conditions prescribed in this behalf by rules under this Act."

We understand that all local governments have supported this proposal, and we trust that it will be accepted by Parliament. It will then be possible to provide, for example, that the sanction of the Governor General shall not be required for any provision in a Bill which re-enacts a provision of any existing provincial law or of a law affecting the same subject matter in another province. The enactment of a rule-making power on these lines would secure elasticity in the provisions as to sanction and enable advance to be made where advance was expedient and so modify the stringency of the existing law.

84. In section 80C of the Act it is provided, *inter alia*, that no member of a Governor's legislative council may introduce in that council without previous sanction a measure affecting the public revenues of the province or imposing any charge on those revenues. The Government of Madras suggest that this sanction should be available only to the particular member to whom it was granted, for six months from the date thereof, and for the particular council sitting when it was granted. We consider that any provision on these lines should apply not only to the particular classes of Bills referred to in section 80C, but also to all laws for which previous sanction is required. In our opinion, however, the suggested restriction to a period of six months is too stringent and we would omit it. In other respects we support the recommendation of the Madras Government.

Reservation of provincial legislation.

85. Mr. Chintamani has also objected to the provisions contained in section 81A of the Government of India Act, which enable the Governor to return a Bill for reconsideration, either in whole or in part, together with any amendments which he may recommend, or enable him and in some cases require him to reserve the Bill for the consideration of the Governor General. This witness would retain only those parts of these provisions which enable the Governor or the Governor General to return a Bill for further consideration, which he considers may be useful in obviating resort to the veto by the Governor or by the Governor General We are not, however, convinced of the feasibility of so curtailing the existing powers; and without them the only course open to the Governor would be either to assent or to refuse assent to a Bill as a

whole. Such provisions are, in effect, a substitute for the selective veto, which has been frequently advocated in the Congress of the United States of America. A President of the United States in a message to Congress, in fact, said in this connection many years ago, "I commend to your careful consideration the question whether an amendment of the federal constitution in the particular indicated would not afford the best remedy for what is often grave embarrassment both to members of Congress and to the executive, and is sometimes a public mischief." Provisions for a selective veto in regard to certain Bills do now appear in the constitutions of at least 37 of the 48 States included in the United States of America. The return of a Bill for the consideration by the legislature of suggested amendments is also provided for in the constitutions of Australia and South Africa and in the constitutions of certain States in America. We consider that provisions of the nature objected to are in conformity with modern constitutional development.

86. In regard to the reservation of provincial Bills the Madras Government further suggest that the following questions should be set at rest by legislation :—

(i) can a Bill passed by one legislative council, to which the Governor has not yet accorded his assent, be returned to a new council for reconsideration in whole or in part? ; and

(ii) when a Bill is returned by the Governor, is it open to the council to reject the amendments suggested by the Governor or to pass other amendments?

So far as the existing law is concerned we consider that these queries should be answered as follows :—

(*a*) the Governor in such circumstances has power to return a Bill to the new council; but, in our opinion, he would be well advised to return it for reconsideration in whole, as otherwise he may commit the new council to provisions in the legislation to which it is opposed; and

(*b*) if the Governor returns a Bill for reconsideration in whole, there seems little doubt to us, that amendments may be moved in the council to any parts of it, and also if he returns it for reconsideration in part amendments may be moved to those parts, and further the amendments suggested by the Governor may either be rejected or amended.

If, in fact, the existing law is doubtful, we recommend that it should be made clear to give effect to these views.

87. We may refer here to two miscellaneous suggestions of the Madras Government :—

Miscellaneous suggestions regarding legislation.

(i) there is in the rules no specific provision for the publication of a Bill before introduction though such publication is essential under the Madras Standing Orders; and

(ii) the operation of section 84 of the Act should be amplified so as to extend to the removal of doubts as to the validity of laws passed by legislatures in India, where there may have been technical flaws, in all cases which are *ejusdem generis* with those mentioned in sub-sections (1) and (2) of the section.

We are unable to support either suggestion. The first suggestion is made because of an apparent conflict between the Madras Standing Orders and the rules. We would suggest the remedy is to be found in an amendment of the Standing Orders to bring them into conformity with the rules. The provisions of section 84 appear to us to be sufficiently wide already.

88. The powers of the legislatures, including in this respect the Legislative Assembly, to appropriate supplies are subject to the powers which may be compendiously referred to as the powers of restoration. It is unnecessary for us to specify the varying limitations upon these powers. They are essential elements of the existing constitution, and we are therefore unable under our terms of reference, even if we so wished, to recommend their withdrawal. We are also unable to support the recommendations of the Indian Members of Council in Bombay and the Bombay Ministers that the powers at present vested in the Governor should be exercisable by the Governor in Council, because we consider that Parliament deliberately vested these powers in the Governor as Head of the Government and not in the executive government on either side. We do not support the suggestion of the Bengal Government that the power to authorise expenditure in relation to transferred subjects should be extended in certain specified cases, though we admit that in the case of one item, expenditure by the Public Works Department on buildings in connection with reserved subjects, the suggestion has received the support of certain *ex*-Ministers. Sir P. C. Mitter has made an interesting suggestion in regard to this question, to which we think it advisable to refer. He would permit the

Powers of appropriation.

Governor, or the Governor General, as the case may be, in lieu of the existing provisions, to authorise expenditure which has not been granted to the extent of the total amount of the previous year's budget, and in the case of the Legislative Assembly to five per cent. above the amount of the previous year's budget. This suggestion is based upon the provisions of the Japanese constitution but would involve an amendment of the Act that is beyond the scope of our reference.

89. The Bengal Government raise a point regarding the rules for the voting of grants. In section 72D of the Act it is provided that the council may assent or refuse its assent to a demand, or may reduce the amount therein either by a reduction of the whole grant or by the omission or reduction of any of the items of which the grant is comprised. This provision does not provide specifically for a motion for the omission of a whole grant and apparently distinguishes between "reduction" and "omission". The legislative rules on the other hand provide that motions may be moved to omit or reduce any grant or any item in a grant. That is, they provide specifically for a motion to omit a whole grant, and in this respect they offend against the normal rule that the direct negative of a motion before the House may not be moved. The Bengal Government refer to a case in which a member moved for the omission of the whole of a grant, and his motion was lost; but when the original demand was put to the vote, that motion was also lost. We consider that the rule should be amended to provide that "Motions may be moved at this stage to reduce any grant or to omit or reduce any item in the grant." On this view a similar amendment would be required in Indian Legislative Rule 48. An amendment on these lines will not, of course, detract from the powers of the legislatures concerned, as it will always be open to them to reject the whole demand by negativing the substantive motion when it is put.

Life of the councils.

90. At the present time the life of the provincial councils and of the Legislative Assembly is restricted to 3 years. We have received evidence to the effect that this period is too short and should be extended to 5 years. The main considerations to be urged for and against the existing provisions are, on the one hand, that an increase of the period would correspondingly reduce the training of the electorate, and, on the other hand, that three years is too short to enable the Ministers to carry out any policy which they may be developing early in their period of office and is also a short period for the training of the members of the council. We consider that the existing provisions should be retained.

Powers, privileges and immunities.

91. It has not been suggested to us from any source that the legislatures in India should be provided with a complete code of powers, privileges and immunities as is the case with most of the legislatures in other parts of the Empire. The matter has been generally dealt with by the enactment of a provision in their Acts of Constitution enabling the legislatures to define their own powers, privileges and immunities, with the restriction that they should not exceed those for the time being enjoyed by the British House of Commons. Eventually no doubt similar provision will be made in the constitution of British India. But we are of opinion that at present such action would be premature. At the same time we feel that the legislatures and the members thereof have not been given by the Government of India Act all the protection that they need. Under the statute there is freedom of speech in all the legislatures and immunity from the jurisdiction of the Courts in respect of speeches or votes. Under the rules the Presidents have been given considerable powers for the maintenance of order, but there the matter ends.

We think that members of the legislatures in India should be exempt from sitting as jurors or assessors in criminal trials. This can be secured by the ordinary law under which local governments already possess power to exempt classes of persons. The position may be made even more secure by an amendment of section 320 of the Code of Criminal Procedure, 1898, so as to include members among the permanent exemptions.

Similarly we think that the Code of Civil Procedure, 1908, might well be amended for the purpose of granting to members immunity from arrest and imprisonment for civil causes during the sessions of the legislatures and for periods of [illegible] immediately preceding and following actual meetings.

Derogatory comments on the proceedings and conduct of the Chambers in India would probably be regarded from the point of view of the British Houses of Parliament as the most common form of breach of privilege at the present time. No party, whether government or non-official, is exempt from strictures of this character. As the government and the legislatures become more truly responsible, it may be necessary to provide some check on the liberty of the press in this respect. But we are not at present prepared to advocate any step in this direction.

We are given to understand that there are at present no means of dealing with the [illegible] of votes within the legislature. We are [illegible] of opinion that the influencing of votes of members by bribery, intimidation and the like should be legislated against. Here again we do not recommend that the matter should be dealt with as a breach of privilege. We advocate that these offences should be made penal under the ordinary law.

It is common knowledge that recently one of the High Courts was moved to intervene and did in fact intervene for the purpose of preventing a President from putting a certain motion to the council. An appeal for the purpose of deciding whether the Court had jurisdiction to issue an injunction on the President was disposed of on other grounds, and unfortunately the question is still unsettled, except in so far as it has been answered in the affirmative by a single judge. We have no hesitation in recommending that the matter should be placed beyond doubt, and that legislation should be undertaken either in England or in India barring the Courts from premature interference with the Presidents of the councils. We do not of course suggest that the Courts should be debarred from deciding on the validity of any action already taken in the House.

Our attention has been invited to the fact that under section 110 of the Government of India Act the immunity granted to the Governor-General, the Governors and the other high officials mentioned therein is incomplete and unsatisfactory. They are exempted merely from the original jurisdiction of the High Courts and though this may have been a sufficient provision in times when the Government of India was permanently located at Calcutta, it is of little value in the present day. We think that, if the immunity is to be maintained, it should be made complete, and that the jurisdiction of all Courts should be barred in respect of the matters referred to in clauses (*a*), (*b*) and (*c*) of sub-section (1).

C.—*Division of Functions.*

92. The division of functions between the central and provincial governments and between the reserved and the transferred sides affects the functions both of the provincial legislatures and also of the provincial executive governments. We propose, therefore, to refer to this question before dealing with our recommendations in regard to the provincial executive governments. The main question is whether any existing reserved subjects should be transferred to the administration of Ministers. The local governments, except in regard to the two subjects in Assam, to which we shall refer, and most of the Indian witnesses before us, though their arguments differ, have arrived at the same conclusion in this respect, namely, that no further subjects should be transferred to Ministers at the present time. We are all satisfied that no recommendations which we may make within the terms of our reference will satisfy all sections of political opinion. We are, however, agreed that this is not a complete answer to the question which has been referred to us. We, moreover, hold the view that a considerable volume of Indian opinion recognises that the transfer of more subjects will effect a constitutional advance. We therefore consider that if there are

subjects which can be transferred, without disturbing the balance of the constitution and without affecting the basis upon which stable government depends, and which will afford a further field of activities to the Ministers, there is a *prima facie* reason for the transfer of such subjects, and it is in the light of this opinion that we have examined the list of provincial subjects.

Detailed recommendations for the transfer of subjects.

93. We now proceed to detail our recommendations in regard to the subjects mentioned in the schedule of provincial subjects annexed to the Devolution Rules. We have no recommendations to make for the transfer of any subjects which we have not mentioned; but as a general minor recommendation we recommend that the two schedules should be examined and the lists should be rearranged on a more logical basis. We would point out, for example, that it is not possible by an examination of the list of provincial subjects to ascertain which of those subjects are reserved without a reference to the list of transferred subjects, and again some of the minor subjects specifically mentioned, for example, coroners, seem already to be included within the scope of larger subjects.

No. 5. Education. This subject is already a transferred subject with certain limitations. The only limitations which we consider can be modified at present are those contained in clause (*b*) of the description, which relate to the portions of the subject which are subject to legislation by the Indian legislature. These are divided into three heads. The third head relating to the Calcutta University and secondary education in Bengal is now nearly spent, and the restriction in it need not continue. The utility of the first head regarding the control of the establishment, etc., of new Universities is also in our opinion exhausted. The provision was framed about the time that the report of the Sadler Commission was under examination, and since then several new Universities have been established by Acts of local legislatures. The exclusions from the provincial subject contained in clause (*a*) of the description will also permit Universities of a central character in Governors' Provinces to be constituted by Acts of the Indian legislature. We therefore recommend that the first head in clause (*b*) should now be deleted. The second head must be retained as it relates to powers which could not validly be given to a University by the local legislature.

No. 7. Irrigation. The description of the subject includes many items besides irrigation proper. A majority of us are of opinion that the whole subject is so closely connected with the Land Revenue as to be inseparable from it and further that in the case of large new projects it is essential that there should be control. We, therefore, recommend, by a majority, that the subject should

not be transferred, but this recommendation is subject to the reservation that the question may be further considered in a particular province where special circumstances may render it desirable to transfer any item included under this description.

No. 8. Land Revenue. We recommend that no change should be made. We consider that this subject is the basis of the administration, and further that as the agency is the same as for Law and Order, the subject should only be transferred when Law and Order is transferred.

No. 12. Fisheries. This subject is transferred in all provinces except Assam, and the local government is prepared for it to be transferred in Assam also. We recommend that this action should be taken.

No. 14. Forests. This subject is transferred in Bombay and Burma, and, though other local governments object to the transfer, we find it difficult to assign any grounds of principle for opposing the transfer in other provinces also. We recommend that it be transferred in other provinces now unless any local government on examination of the position can make out a convincing case against the transfer in its own province.

No. 15. Land Acquisition. The *prima facie* reasons for not transferring this subject are not very clear. A difficulty has however been pointed out to us in connection with the acquisition of land for the central government. We ourselves see no objection to the transfer of this subject in so far as it relates to purely provincial land acquisition, but this is a matter on which the provincial governments should be definitely consulted before any action is taken.

No. 16. Excise. The subject is transferred in all provinces except Assam. The local government does not object to, and we recommend, its transfer in that province.

No. 18. Provincial Law Reports. The subject is so intimately concerned with the High Courts that we consider a reference should be made to them before a final decision is arrived at, but, subject to this reservation, we ourselves see no reason why the subject should not be transferred.

No. 26. Industrial matters included under the following heads, namely :—

(*a*) factories;

(*b*) settlement of labour disputes;

(*c*) electricity;

(*d*) boilers;

(*e*) gas;

(*f*) smoke nuisances; and

(*g*) welfare of labour, including provident funds, industrial insurance (general, health and accident), and housing;

subject as to heads (*a*), (*b*), (*c*), (*d*) and (*g*) to legislation by the Indian legislatures.

We have repeated the full description of this subject because our recommendations involve that the various heads of which it is composed should be treated differently. We recommend that (*d*) boilers, (*e*) gas, and housing from amongst the questions referred to in (*g*) should be transferred, those which are now subject to legislation by the Indian legislature continuing to be so subject after they have been transferred. The main reason why we have decided that certain of the heads should be retained as provincial reserved subjects is that the central government is concerned in the administration of the heads retained as reserved subjects and can maintain a control which would be lost if they were transferred. This is particularly the case in regard to factories, settlement of labour disputes and welfare of labour, including provident funds and industrial insurance. We are agreed that legislation on these matters should be conducted on uniform lines. It might be urged that it would be possible to secure this by the provision that they should be subject to legislation by the Indian legislature. In our opinion, however, in these respects the central government must not only have power to legislate but must also have a corresponding power to carry out its laws. So long as the central government retains its powers of superintendence, direction and control over the administration of the provincial reserved subjects, the classification of these matters as provincial reserved matters may be supported, because the agency for carrying out the duties in connection with these matters is a local agency. We are, however, looking forward to the time when further constitutional changes will be introduced in India, and we are anxious to avoid any decision at the moment which can be regarded as finally deciding that these heads are solely matters of provincial concern. In regard to the remaining matters which we recommend should be retained as provincial reserved subjects, smoke nuisances is a subject intimately connected with factories and electricity is a subject over which it is desirable that there should be an opportunity of central control, at any rate if developments on a large scale are proposed.

No. 27. Stores and Stationery. The subject is transferred, but it is subject in the case of imported stores and stationery to such rules as may be prescribed by the Secretary of State in Council. We recommend that this restriction be removed. This will necessitate the deletion of these words in the schedules of provincial and also of transferred subjects

No. 43. Provincial Government Presses. We recommend that the question of whether this subject cannot be transferred should be examined.

Subjects which are subject to legislation by the Indian legislature.

94. It will be convenient at this stage to return to the subject of the control of provincial legislation by the prescription that subjects are "subject to legislation by the Indian legislature." The effect of this restriction is that the central legislature can legislate upon these subjects without restriction, and that the provincial councils can only legislate after previous sanction has been obtained to the proposed legislation. On the other hand, if the restriction is not embodied in the description of any provincial subject, the central legislature can legislate in regard to such subject only if previous sanction has been obtained, and the provincial councils can legislate without restriction. We have recommended in the preceding paragraph one minor modification in the list. This restriction has been very widely attacked, but the only specific recommendations for modification which we have received have been made by Nawab Bahadur Syed Nawab Ali Chaudhury. He recommends that the prescription be withdrawn in the following cases; (i) Land Acquisition, (ii) High Courts, Chief Courts and Courts of Judicial Commissioners and any courts of criminal jurisdiction, and (iii) the Industrial matters in entry No. 26 of the list of provincial subjects which are now subject to legislation by the Indian legislature. In regard to the third class we have indicated in the preceding paragraph reasons why it should continue to be subject to legislation by the Indian legislature, and we also consider that no change should be made in regard to the other two cases.

Central Subjects.

95. We have considered the question of the classification of central subjects as provincial subjects, and we have no recommendations to make, except that we think the words in item 20 of the central schedule which require the order of the Governor General in Council to be made after consultation with the local governments should be modified so as to provide that such order shall be made with the concurrence of the local government or local governments concerned.

D.—*The Provincial Executive Governments.*

Working of Dyarchy.

96. The framers of the present constitution left much to the growth of conventions, but in the light of the evidence before us we are convinced that the growth of conventions requires a much longer term than the statutory period, and that to ensure the satisfactory working of the Act in the manner in which its framers

intended that it should be worked, more definite provisions are necessary. In the administration of a province there must be many questions which must naturally be the subject of cabinet consultation. In regard to such questions the Joint Committee indicated their view that the habit of joint deliberation between the Members of the Executive Council and the Ministers sitting under the chairmanship of the Governor should be carefully fostered. They observed that there cannot be too much mutual advice and consultation on such subjects, but that they nevertheless attached the highest importance to the principle that, when once opinions have been freely exchanged and the last word has been said, there ought then to be no doubt whatever as to where the responsibility for the decision lay. It was intended that dyarchy should be worked as dyarchy and not as a unitary government; that there should be joint meeting for the purposes of informing one side of the action being taken on the other side of the government, and for mutual influence and discussion; but that it should be clear which part of the government is responsible for any decision taken. The evidence appears to indicate that dyarchy in different provinces, and sometimes at different times in the same province, has been worked in very different ways. In order to secure the working of dyarchy in the manner intended, there should in our opinion be a definite rule under the Act, that is, in the Devolution Rules, which would reinforce the convention that questions of importance should be considered by the Governor sitting at a joint meeting with the Executive Councillors and the Ministers. The decision would be arrived at on the side of government concerned with the subject. In a case of doubt the Governor would decide, as at present, which side was concerned, and the Governor would also decide which cases were of importance. A rule on these lines would correspond with rule 5 of the Fundamental Rules made by the Secretary of State in Council under section 96B of the Act. As it would be a rule under the Act it would supersede any rules of business made under section 49, sub-section (2).

97. At the conference held in Burma at which the questions which have been referred to us were considered, it was recommended that a rule should be inserted as Rule 9A in the Devolution Rules to the following effect :—

> "In all matters whether affecting transferred or reserved subjects, which in the opinion of the Governor involve any question of general policy, the Governor shall, and in all other matters, whether affecting transferred or reserved subjects, the Governor may, order the matter and the question involved to be brought for consideration and decision before a meeting of the Executive Councillors

and his Ministers sitting together. The decision of the majority shall prevail. The provisions of sections 50 and 51 of the Act shall apply to such a meeting. The opinion of the Governor as to whether any matter involves any or what questions of general policy shall be final."

The intention of this draft rule was that in questions which were thus brought for consideration before a meeting of the two halves of the government sitting together the Governor's powers of overruling should be restricted to those contained in section 50, sub-section (2), of the Act. It will be seen that this proposal differs essentially from our recommendation in the preceding paragraph. As stated by the Government of Burma such a rule as that quoted would be clearly opposed to the principle of dyarchy which is based on the theory of the separate responsibility of the Governor in Council for reserved subjects and of the Governor acting with his Ministers for transferred subjects. We are, therefore, unable to support this recommendation.

Joint responsibility of Ministers.

98. Another fundamental question in the working of the provincial executive governments is that of the joint responsibility of Ministers. The difficulties in the way of establishing joint responsibility in India are doubtless great. It is, for example, difficult to select Ministers from a single well organised party, and this is particularly so where the main Hindu and Muhammadan communities are keenly divided in a local council or where there are other communal differences of an acute character. Joint responsibility practically also involves the recognition of a Chief Minister, and the difficulties to which we have just adverted are thereby enhanced; but we do not wish to suggest that these difficulties are insurmountable. We are convinced that joint responsibility of the Ministers is of the very essence of the present constitution. The object of the reforms was not merely to train Indians in administration; that could have been secured by other means. The object was to introduce an approach to cabinet government for the transferred side of the administration, and until this is accomplished, there will be, in our opinion, little training in responsible government. It has been suggested that sub-section (3) of section 52 of the Act implies that the Governor on the transferred side will act on the advice of the individual Minister, but we do not subscribe to this view. There are, however, some provisions in the Rules under the Act and also in the Instrument of Instructions which suggest that the Governor in relation to transferred subjects should be guided by the advice of the individual Minister. Rule 10 of the Devolution Rules and clause III of the Instrument of Instructions are examples of the provisions to which we are referring. We suggest that the Government of India should

examine all the rules and the Instrument of Instructions in order that, where necessary, they may be amended with the object of indicating clearly that the ideal is that the administration on the transferred side should be conducted by a jointly responsible Ministry.

Choice of Ministers.

99. Some of the difficulties in the way of the introduction of a system of joint responsibility in India are indicated by suggestions which have been made in the evidence tendered to us. For example, a witness from the Punjab, who supports joint responsibility, has recommended that the cabinet should be so constituted that no community preponderates in it, and that, so long as there is communal representation in the council, the Minister selected to represent a community should be acceptable to the majority of the members belonging to it in the council. The close ties which are required for a system of joint responsibility can scarcely be expected, if the members of the cabinet are definitely to be chosen both to provide for communal representation in it and also for each Minister to be acceptable to the majority of the members belonging to his community. By this we do not of course mean to suggest that joint responsibility involves by any means the choice of a cabinet from a single community.

Some witnesses have also suggested that the Ministers should be appointed by the Governor from a panel selected by the council. The intention is presumably that the panel should be chosen by a system of proportional representation. It is clear that this system also would not tend to facilitate the growth of the ideal of joint responsibility, and might even operate to prevent its growth. Mr. Kelkar, one of the witnesses who made this suggestion, in the course of his oral examination, admitted that it would serve his purpose if the Governor sent for prominent members of the council and consulted them so as to find out which members have the largest amount of support in the council. He, however, adhered to his view that the panel system would be preferable if the council was divided into two or three equal parties. We are not prepared to support any recommendation on these lines.

Salary of Ministers.

100. Section 52, sub-section (1), of the Act provides that the Minister shall receive the same salary as is payable to a Member of the Executive Council in the province, unless a smaller salary is provided by a vote of the council. The intention was that the Minister's position should bear some relation to that of a Member of the Executive Council, and that he should, therefore, draw about the same salary. In Bengal the legislative council this year has refused to provide any salary for the Ministers, and in the Central Provinces it has provided a salary of Rs. 2 per annum only.

The Bengal Government suggest that it was probably never contemplated that the council would refuse to grant any salaries to the Ministers, and, if it was not intended that the council should have the power of preventing any Ministers being appointed, some amendment of the Act is required, either to restrict the limits within which the salaries of the Ministers may be fixed, or else to give the Governor power to authorise expenditure on the salaries of the Ministers. The Government of Bihar and Orissa have also referred to this point. They state that there is reason to apprehend an undignified and unpleasant situation, if the present provisions are continued. It was never intended by Parliament that the Act should give power to the councils to decide whether Ministers were or were not to form a part of the government, and Parliament did intend that the Ministers should get a reasonable salary. The question is of course connected with the responsibility of the Ministers to the council to which we have referred above. We have made definite proposals with the object of securing that this responsibility shall be real. Nevertheless, we see considerable advantages in retaining also the constitutional position that disapproval of a Minister's policy may be indicated by a motion for the reduction of his salary. We therefore desire to retain this power, and yet to accompany it by provisions which will secure that the Ministers shall receive a reasonable salary. We accordingly recommend that section 52, sub-section (1), of the Government of India Act should be amended in the following respects. In the first place, that section should provide that a Minister of a province should ordinarily receive the same salary as a Member of the Executive Council in that province. Secondly, power should be given to vary by an Act of the local legislature the salary fixed by the section so that it shall not be less than three-fifths of, nor more than, the salary payable to a Member of the Executive Council in that province. In the third place the section should provide for the making of rules to enable a formal reduction of a Minister's salary to be moved at the time of the Demands for Grants as a method of criticising his policy.

Control of the Governor.

101. We have indicated the nature of the evidence tendered to us in regard to the control of the Governor over his Ministers and have included our findings in this respect in Part I. The Governor is empowered by sub-section (3) of Section 52 of the Act to direct in regard to the administration of transferred subjects that action shall be taken otherwise than in accordance with the advice of his Ministers. We agree that this control by the Governor over the Ministers is an essential part of the existing constitution and that we are, therefore, unable, even if we desired to do so, to recommend that the limitation upon the powers of the Ministers imposed by it should be eliminated, and

the Governor be reduced to the position of a constitutional Governor. The Joint Committee stated that the Governor should never "hesitate to point out to the Ministers what he thinks is the right course or to warn them, if he thinks they are taking the wrong course. But if, after hearing all the arguments, Ministers should decide not to adopt his advice, then, in the opinion of the Committee, the Governor should ordinarily allow Ministers to have their way, fixing the responsibility upon them, even if it may subsequently be necessary for him to veto any particular piece of legislation. It is not possible but that in India, as in all other countries, mistakes will be made by Ministers, acting with the approval of a majority of the legislative council, but there is no way of learning except through experience and by the realization of responsibility".

In deciding whether he should not accept the advice of his Ministers it was intended that the Governor should be guided by his Instrument of Instructions. We consider that the Instrument of Instructions does not entirely give effect to the view of the Joint Committee as embodied in the passage we have cited. Clause VI of the Instrument of Instructions, for example, merely provides that the Governor shall have due regard to the relations of the Minister with the legislative council and to the wishes of the people of the province as expressed by their representatives in the council, and this does not indicate that the Governor should normally accept the advice of his Ministers which was, we think, the view of the Joint Committee. We accordingly recommend that clause VI of the Instrument of Instructions should be redrawn so as to provide that, subject to a power of interference to prevent unfair discrimination between classes and interests, to protect minorities and to safeguard his own responsibility for reserved subjects and in regard to the interests of the members of the permanent services, the Governor should not dissent from the opinion of his Ministers. In this connection we would also refer to the existence of the power of resignation, and in regard to it we recommend that provisions, as far as possible following the English practice, should be made in the legislative rules giving a Minister who has resigned the right to make in the council a personal explanation of the causes of his resignation.

Rules of Executive Business.

102. Many suggestions have been made that the rules of Executive Business made by the Governors of the various provinces under sub-section (2) of section 49 of the Act are not in conformity with the intention of the constitution. By the courtesy of the Governors of all provinces we have been enabled to examine the rules which have been made, and we only propose to refer to points where we consider that the rules can be generally amplified with advantage.

(*a*) We think that, where this is not already the case, the rules might, with advantage provide that a Member or a Minister in regard to any case in his own department should be able to make a recommendation to the Governor that it should be considered before the joint cabinet or before that side of the Government which is directly concerned in it.

(*b*) Complaints have been received that the rules under which a right of access to the Governor is accorded to Secretaries and to Heads of Departments have not worked well on the transferred side. As a matter of fact these rights are not confined to that side. Under the present constitution it is not intended that the Governor shall restrict his functions to those of a constitutional Governor. It is only therefore proper that the Secretaries to Government and such permanent Heads of the Departments as are so privileged should acquaint the Governor with the actual course of administration. It should be borne in mind that the Secretaries are Secretaries to Government and not Secretaries to the individual Minister or Member of Council. To remove the suspicion that this right is capable of being used to influence the Governor behind the back and without the knowledge of the Minister we recommend that, where this is not already the case, a rule should be included in the Rules of Business requiring the Secretary in the Department or other officer with a right of direct access, to inform his Minister of every case where there is a difference between them and of all other important cases which he proposes to refer to the Governor.

(*c*) In the present connection we have been informed that in a certain province the Ministers had to ask for an interview with the Governor before it was accorded. We understand that such a procedure is exceptional, and we believe that a special day in each week is generally set apart by the Governors for interviews with their Ministers. This seems to us the correct procedure. Any such arrangement would, of course, be in addition to the right of each Minister to ask for an interview with the Governor on special occasions.

Temporary administration of transferred subjects in an emergency.

103. The Bengal Government have raised a minor point in regard to the temporary administration by the Governor of transferred subjects in cases of emergency. Such administration is provided for by the Transferred Subjects (Temporary Administration) Rules made under the proviso to sub-section (3) of section 52 of the Act. Clause (2) of rule 2 of these rules provides that the Governor may in the case of a vacancy in the Ministry, if it cannot be provided for by entrusting the administration of the subjects to an available Minister, himself temporarily

administer the subjects. The Bengal Government suggest that the intention is evidently that the Governor shall have no discretion, but that he must take charge of these subjects in such circumstances. We agree that the word " may " should therefore be changed to " shall ".

In regard to these rules also Sir K. V. Reddi has suggested that the powers of the Governor should be restricted. He would provide that the Governor shall not do anything or make any appointment or initiate any policy which the previous Minister had already objected to or disapproved of. We think it is clear that when conditions arise, as in Bengal and in the Central Provinces at the present time, such a restriction would be impossible. We are accordingly unable to support the recommendation.

Control over the services.

104. We have received many complaints that the control of the Ministers over the services is insufficient. The position is that up to the present the control over the All-India Services has been vested in the Secretary of State in Council. In the future, however, if the recommendations of the Lee Commission are given effect to, the Ministers will be given much greater powers of control. Decisions upon the report of the Lee Commission are about to be taken, and we have, therefore, not examined this question in detail. We must, however, state our definite opinion that it is essential in the interests of India that the position of the services should be safeguarded. We agree that the services should be protected in the exercise of their functions and in the enjoyment of their recognised right and privileges, and we trust that any action necessary to secure this will be taken. We are agreed that it is undesirable that Ministers should have control over recruitment which we would entrust to the proposed Public Service Commission or Commissions.

In connection with this question there is, however, one further point to which we desire to refer, namely, the representation of the various communities in the permanent civil services in India. We recognise this question has a bearing upon the subject matter of our enquiry. The point has been raised by the Muhammadan community in particular. We consider that it is impossible to fix any percentage for the representation of the communities in the services by statutory rule, and the utmost action that is possible, is to arrive at some formula which will meet the point. We think that such a formula might run as follows :—

" In the rules for recruitment Government should provide that, with due regard to efficiency, all communities should receive due representation in the public services."

Our view is that there should be an efficiency bar for each service, and if a due representation of persons who have passed that efficiency bar cannot be obtained from a particular community, it will be clearly impossible to give such representation to that community. Subject to this, however, such representation, if necessary by nomination, should be accorded.

Council Secretaries.

105. We have received some suggestions in regard to the appointment of Council Secretaries. Sir P. C. Mitter, for example, has suggested that in lieu of Council Secretaries whose salaries are voted, Ministers should be given parliamentary private secretaries. He suggests that rules should be framed so as to enable the Governor, in consultation with the Ministers, to appoint such persons. It is not clear that Council Secretaries have hitherto been at any rate uniformly a success. The Central Provinces Government, for example, state that Council Secretaries were appointed, but they did not make their influence felt or win a recognised position. In the opinion of that Government the experiment must be classed as a failure. In Bihar and Orissa also, where a suggestion has been made that Council Secretaries should be appointed to take the place of the ordinary departmental secretaries for work in the council with the motive of eliminating the suspicion of official influence over the Ministers, the Bihar and Orissa Ministers observe that they cannot do without their departmental secretaries who are in constant touch with the departments and are, therefore, in the opinion of these Ministers, in a better position to give them the assistance they need than any Council Secretaries. They think that such appointments will at the most only give a training to some members of the legislative council and even this requires mature consideration. Whatever may be the case as regards Council Secretaries in departments dealing with reserved subjects we think that in departments dealing with transferred subjects they should be able to fill a useful position. They should not only be able to assist the Minister, but they should also be able to obtain a training which should assist in fitting them for future appointment as Ministers. We consider, therefore, that the provision enabling such appointments to be made should be retained for use in those provinces where such appointments are desired. In regard to the appointment of Council Secretaries on the reserved side, we would retain the existing provisions. On the transferred side, however, we think that the Act should be amended so as to provide that the Ministers should make recommendations for the appointment of Council Secretaries for the approval of the Governor, and that the Council Secretaries on the transferred side should hold office during the Ministers' pleasure. It may be constitutionally inexpedient to

provide definitely for the latter provision in the statute. We consider, however, that on the transferred side of the administration the Council Secretaries should hold and vacate office with the Minister. This is one form of patronage, which, we consider, should be vested in the Ministers. When Council Secretaries are appointed we consider that they should receive a reasonable salary, and accordingly, on the analogy of the arrangement we have suggested as regards the Ministers' salaries, we would provide that their salaries should be determined by an Act of the local legislature. It is impossible, we think, in this case to provide in the statute for any limits to the salaries which may be fixed by such Acts. Further, in our opinion, it is unnecessary to provide that there should be any opportunity to reduce the salaries of Council Secretaries during the course of the discussions on appropriation.

E.—*Finances of the provincial governments.*

The Finance Department.

106. The intention of the Government of India in proposing the constitution of financial departments in the provinces was explained in paragraph 74 of their First Despatch on Indian Constitutional Reforms. They indicated that the withdrawal of external control over finance implied the substitution of effective control within the province. That control was to be provided partly by the Finance Department. The functions of this Department were to be in no sense overriding. The Finance Department proposed by the Government of India was not to be a body that either dictated or vetoed policy. It was required to watch and advise on the financial provisions which are needed to give effect to policy. It was to be able to criticise proposals; to ask for further consideration; to point out defects in methods of assessment and collection; to demand justification for new expenditure; and to press the necessity for economy in regard to expenditure on a particular object. In the last resort, however, the Government of India definitely indicated that administrative considerations must prevail. If the dispute regarding expenditure related to a reserved subject the Finance Member might be overruled by the Governor in Council. If on the other hand it related to expenditure on a transferred subject the Minister in charge of the particular subject was to be able to overrule the objection, taking the full responsibility for so doing. The Government of India explained that in theory in England the Minister concerned would require to obtain the endorsement of the Cabinet to his views in such a case. In an Indian province he would need only the concurrence of the Governor.

107. The provisions governing the constitution and functions of the Finance Department are contained mainly in rules 36 to 45 of the Devolution Rules. The main functions of the Department are described in rule 37. *Inter alia*, the Department is required to prepare the statement of estimated revenue and expenditure and any supplementary estimates or demands which have to be submitted to the vote of the council. The rule provides also that the department should examine and advise on all schemes of new expenditure and should decline to provide in the estimates for any scheme which has not been so examined. This is one of the few overriding powers vested in the Finance Department by the rules. Under rule 38 the Finance Department only has general power to sanction reappropriation from one major, minor or subordinate head to another. Otherwise, generally speaking, it is provided that the Finance Department shall be consulted on proposals involving expenditure, reduction of revenues and matters of a like nature. The reports of the Finance Department are forwarded to the department concerned, and the Finance Department is empowered to require that they shall be submitted to the Governor for the orders of the local government. The Auditor General has definitely indicated that when such a report on an expenditure proposal is received by a Transferred Department, the Minister in charge may overrule the Finance Department, unless the Finance Department has definitely required that the Minister shall refer the case to the Governor. In doing so, of course, the Minister, in the words of the First Reforms Despatch, which we have cited, would take full responsibility. The definite provision that the Finance Department may require that its reports in particular cases should be submitted to the Governor indicates that it is not even necessary for him in all cases to obtain the concurrence of the Governor in the manner suggested in the First Reforms Despatch, though doubtless he would normally, when assuming responsibility for such action, do so.

108. A concrete objection to the control of the Finance Department has been taken by Mr. Ghuznavi in his evidence with reference to the powers given by rule 37 (*g*) (3). Mr. Ghuznavi admits that this provision which requires the Finance Department to decline to provide in the estimates for any scheme which has not been examined by the Department was intended to be a guard against waste, but, he says, that the provision has been found to vest excessive powers in the Finance Department. The working of this rule was definitely referred to by Mr. Marr, Financial Secretary to the Government of Bengal, and he mentioned cases in which provision had been made in the estimates for schemes which had not been fully worked out and the department

concerned failed in consequence to utilise the provisions included in the estimates. We are not in favour of any modification of this provision which we regard as a necessary check upon the waste of public funds.

109. General allegations against the Finance Department are made in the evidence given by Mr. Kelkar, Mr. Chintamani and Sir P. C. Mitter. Mr. Chintamani, for example, referred to the wide scope and vast powers of the Finance Department and also to its importance and its all pervading nature; nevertheless, without committing himself to details, he agreed that control of the nature of treasury control in England is wholesome and necessary. In our opinion, however, the evidence of most of the witnesses against the control of the Finance Department is largely based upon misapprehensions. The control of the Finance Department is not only irksome to officers of the Transferred Departments, but officers of the Reserved Departments and of the central government often experience the same feeling. We are also told that Departments in England are at times equally impatient of treasury control. We are agreed that a control of the nature provided in the Devolution Rules is necessary, and we do not consider that any substantial modification of these provisions can be made.

The Finance Member.

110. Rule 36 provides that the Finance Department shall be under the control of a Member of the Executive Council. This was in accordance with the original recommendations of the Government of India in the First Reforms Despatch where they stated that "convenience and economy both suggest that the whole financial control should be under one roof especially as at the outset the work on transferred subjects will be a small part of the whole. The department should be a reserved one". This provision has been strongly objected to in the evidence adduced before us. We, however, feel that the real objection is not that the Finance Member is a Member of the Executive Council, but that he is a Member of the Government and often in charge of large spending departments. The Auditor General has suggested that it would be theoretically advisable that the Member in charge of the Finance Department should have no other functions. In this connection the question of expense is obviously a matter for consideration. We do, however, think that he should not be in charge of any of the main spending departments. Otherwise, there must be a tendency for him to provide funds for his own departments at the expense of others particularly because of his knowledge of surplus revenues which are available for expenditure at a particular time. We note, however, that actually the Finance Department is not vested with the power to allocate revenue for expenditure in regard to transferred and reserved subjects. Rule 31 provides

that the framing of proposals for such expenditure shall be a matter of agreement between the two sides of the administration. We think that the rule does not perhaps very clearly indicate that it applies not only to the distribution of revenues on the occasion of the preparation of the annual estimates of revenue and expenditure, but also to the allocation of revenues which may become available during the course of a particular financial year owing to the failure of one department or another to expend the funds allotted to it. We recommend, therefore, that rule 31 should be expanded to indicate clearly that it applies in such cases as well as in the case of the distribution of revenues when the annual estimates are being prepared.

Joint *versus* Separate Purse.

111. Before the inauguration of the reforms the Government of India carefully considered the alternatives of providing that the expenditure of the Governor in Council and of the Governor acting with his Ministers should be provided from a joint or a separate purse. They finally came to the conclusion that it was advisable definitely to divide the revenues and the balances at the credit of each province between the two sides of the administration. The question was considered by the Joint Committee, and ultimately the arrangements now contained in the Devolution Rules were accepted. These rules provide that normally there shall be a joint purse from which the expenditure in regard to both transferred and reserved subjects shall be met, the resources available for each side of the Government being decided by agreement. The Governor was, however, given power in the event of a failure to arrive at an agreement to provide for the definite allocation of the revenues and balances of the province between reserved and transferred subjects. The order of the Governor in this respect was to remain in force for a specified period which should not be less than the duration of the existing council and not exceed by more than one year such duration. In actual practice it has not been found necessary in any province to apportion the available funds in this manner. It is possible that this has been due to the fact that surplus funds were, generally speaking, not available. When the proposals of the Government of India for separate purses were made they did not on the whole secure support from Indian political opinion. The evidence tendered to us would seem to indicate that there has been some change in this respect. The Madras Government, a Member of Council and some *ex*-Ministers from Bengal, the President of the legislative council in Bihar and Orissa and a Minister in Assam all suggest that the system of a separate purse should be established. So long, however, as it is possible to arrive at an apportionment of the available funds by agreement, as has been the case up to the present, we are not disposed to support these recommendations. This proposal for a separate purse, save in

the exceptional circumstances which we have indicated, was considered at length and definitely rejected. There can be no doubt that such a separation must introduce complications, and we are not prepared to recommend a re-opening of the question.

Joint Financial Secretary.

112. A joint Financial Secretary has not been appointed in any province, and it would appear that hitherto Ministers have not pressed strongly for such an appointment anywhere. Some of the evidence before us apparently shows that this may have been due to a misapprehension of the functions which it was intended that the joint Financial Secretary should perform. Mr. Chitnavis, for example, says that such an official might be looked upon as a spy, and it is no wonder that in no province have Ministers pressed for this appointment. There is some evidence that the other view is now securing greater acceptance. The Bombay Government, and the Bombay Ministers suggest that such an officer should be appointed, and similar suggestions have been made by several *ex*-Ministers in Bengal. The suggestion of the Indian Members of Council and the Ministers in Bombay that the joint Financial Secretary when appointed should be allowed to examine all proposals for expenditure not only in the Transferred but also in the Reserved Departments seems, however, to indicate that there is still some misapprehension as to the intention of the provisions of rule 36 (2) of the Devolution Rules. We are inclined to think that such misapprehensions are due in part to the wording of the rule itself which refers to the joint Secretary being associated with the Financial Secretary. The original view of the Government of India in regard to this appointment is indicated in paragraph 74 of the First Reforms Despatch. They suggested that the officer should be the financial adviser of the Ministers in all transferred subjects; he should be wholly at their disposal to help them on the financial side of their work; he should prepare their proposals for expenditure and the like for presentation to the Finance Department and should see that their cases were properly represented there. We fully agree that it is an officer of this character who is really required, and we recommend that the rule should be amended so as to provide for the permissive appointment of a financial adviser instead of the appointment of a joint Financial Secretary. It appears to us that his functions should correspond roughly to those of the financial advisers who have been appointed in certain Departments of the Government of India. The Financial Adviser, Military Finance, is, for example, the financial adviser of His Excellency the Commander-in-Chief. His advice is always at the disposal of the Commander-in-Chief in regard to proposals for army expenditure. An officer of this kind should, we think, frequently be able to afford very valuable assistance to the Ministers particularly when

funds are available for development on the transferred side. Such a financial adviser would doubtless receive delegated powers from the Finance Member, and in the exercise of such powers he would treat the proposals of the Ministers primarily from the financial standpoint. His main value to the Ministers would, however, be in advising them in the preparation of their proposals for expenditure so as to secure that they are not likely to suffer from technical objections which might be raised by the Finance Department.

Reappropriation.

113. A Member or Minister has power to sanction reappropriations within a grant between heads subordinate to a minor head, which do not involve undertaking a recurring liability. The Finance Department on the other hand have power to sanction any reappropriation within a grant from one major, minor, or subordinate head to another. The Burma Ministers say that, so far as transferred subjects are concerned, the Ministers should have the same powers as the Finance Department. The Burma Government state that they have no objection to the rule being re-drafted so as to give the administrative departments (that is, both a Member and a Minister) power to sanction reappropriations within a grant from one major, minor or subordinate head to another, on the understanding that Government is not committed, without reference to the Finance Department, to additional recurring expenditure.

We do not anticipate that if this recommendation is given effect to it will have any appreciable effect. Mr. Marr, the Financial Secretary of the Bengal Government, also suggested a difficulty in that the administrative department may sanction reappropriation on the view that their sanction does not involve a recurring liability whereas on examination this view may be shown to be not well founded. We note, however, that the recommendation would apparently be given effect to by substituting in clause (*b*) of Devolution Rule 38 (1) for the words " between heads subordinate to a minor head " the words " from one major, minor or subordinate head to another ", and in that case the Finance Department would at once obtain information of the reappropriation from the copy of the order of sanction communicated to it. We think therefore that the recommendation might be accepted.

114. Another complaint is made by the Burma Ministry in regard to Devolution Rule 42. Under this rule, *inter alia*, no concession, grant or lease of mineral or forest rights may be granted without previous consultation with the Finance Department. Under rule 45, however, the Finance Department may prescribe by general or

been given. The Burma Ministers complain that in regard to grants and concessions of forest rights the Finance Department has refused to take any action under Rule 45. The result is, that, whereas certain permanent officials in the Forest Department may grant forest rights within certain limits under the Forest Code, the Minister has no power to do so without previously consulting the Finance Department. The Burma Government explain that there have been only two cases during the last 18 months in which there has been disagreement. These were considered at a meeting of the whole government and were settled by agreement. We agree with the Burma Government that, in cases in which considerable financial interests are involved, it is not unreasonable to require previous consultation with the Finance Department. We think, however, that the Finance Department should prescribe that its assent should be assumed in cases of even greater importance than those that can be disposed of by the permanent officials. This would, in our opinion, meet the substance of the Ministers' complaint.

Borrowing powers.

115. The existing restrictions upon the borrowing powers of local governments are embodied in the Local Government (Borrowing) Rules which depend upon the provisions of section 30, sub-section (1*a*), of the Act. The loans are raised on behalf and in the name of the Secretary of State in Council and on the security of the revenues allocated to the province. It is clear that they may be raised only for the purposes specified in the rules. We consider that the expenditure of the money raised is also further restricted by the provisions of section 20, sub-section (1), of the Act, to the purposes of the government of India. This phrase has been held to mean the superintendence, direction and control of the country, but in certain judicial decisions doubts have been expressed as to whether certain classes of expenditure fall within its scope. As an example of the restrictions which might possibly be held to follow from this provision, we cite the question of whether a local government would be able to utilise funds raised by borrowing to finance industries being carried on by private persons. We consider that the governments in India should have this power, but we do not attempt to answer the legal question. As doubts have been expressed as to the scope of the expression in section 20 we recommend that steps should be taken to obtain a clear definition of its meaning. The Madras Government refer to the restriction placed upon loans falling within clause (*a*) of rule 2 of the rules by the provision that the proposed expenditure must be so large that it cannot reasonably be met from current revenues. We understand, however, that the Secretary of State has recently sanctioned proposals which will in effect meet the point raised by the Madras Government.

Separation of provincial balances and of accounts from audit.

116. We agree that appreciable further advance towards autonomy in provincial finances depends on the separation of provincial balances from the balances of the Government of India. The Government of the Punjab have suggested that with the adoption of a system of separate accounts with central banks it would be possible to justify the grant to local governments of a freer hand in the regulation of their ways and means, and the same applies to other financial questions. For example, some relaxation of the control over borrowing might be possible, though we do not consider that in the circumstances of India the relaxation can be complete, and it would then also presumably be unnecessary to retain the restrictions in rule 21 of the Devolution Rules upon the powers of local governments over their balances. We are desirous that such administrative steps as are necessary to pave the way for provincial autonomy should be taken, and we are therefore much interested in the experiments which are now being undertaken to test the feasibility of the separation of accounts from audit and in the examination of the feasibility of separating provincial accounts from the accounts of the central government. These points are referred to in the evidence of Sir Frederick Gauntlett and of Mr. Jukes, and we do not think it necessary for us to attempt to summarise that evidence in detail. If provincial accounts are separated from central accounts it will be necessary for the provinces not to overdraw their balances throughout the year, and this may cause some difficulty. The provincial revenues are received at definite seasons, but the expenditure normally goes on throughout the year. Adjustments between central and provincial governments are made at the end of a year, and the position of provincial finances from month to month is therefore not clearly represented in the government accounts. We append a statement (Appendix No. 4) furnished to us by the Auditor General showing provincial balances from month to month for the year 1922-23 after important adjustments, other than those which from their nature must be made at the end of the financial year or on specified dates, have been distributed throughout the year. The maximum and minimum balances of each province during the year are underlined, and they indicate the great variation in these balances during the course of a year. Mr. Jukes has, however, informed us that, if the provinces at the same time assume charge of the very considerable sums of money which are deposited for short periods with government, they will obtain more than sufficient funds to meet their day to day requirements. With the separation of audit from accounts the latter function would of course become a provincial subject under the control of the provincial finance department.

F.—*The Central Government.*

117. The general proposals which we have received for the revision of the constitution of the central government are not within the scope of any recommendations which we are empowered to make. We have referred in Part I to their general character, and we do not propose to discuss them further. When referring to the provincial legislatures and their powers we have in several cases, made proposals which will apply to one or both of the two chambers of the central legislature. These are definitely indicated in the summary of our recommendations. We now turn to a few points which concern the central legislature directly.

European commercial representation in the Legislative Assembly.

118. The European Association strongly press for direct representation of European commerce and industry in the Legislative Assembly, but they are equally strongly averse to this being provided at the expense of the European general constituencies. The Bengal Chamber of Commerce also say that it is indisputable that the provision made for the representation of European commercial interests in the Legislative Assembly is most inadequate, and the same point is made by the Bihar and Orissa Government. The constitution of the two chambers of the central legislature was fixed on the lines that European commercial interests should be represented in the Council of State and the European community generally in the Legislative Assembly. We admit that European commercial interests are affected largely by the questions which come up for consideration in the Legislative Assembly in a greater degree than in the Council of State. We think on the whole, however, that a general revision of the constituencies of the two chambers should be awaited before any change is made in this respect, and we cannot recommend that such a general revision of the constituencies should be undertaken now.

Certification of legislation.

119. The powers of certification of legislation possessed by the Governor General under sub-section (1) of section 67B of the Act have been criticised. Under these powers the Governor General may certify that the passage of a Bill, which either chamber of the Indian legislature has refused leave to introduce or has failed to pass in a form recommended, is essential for the safety, tranquillity or interests of British India or any part thereof. The Deccan Sabha suggest that the words " or interests " are too wide for the purposes of an affirmative power of legislation. They admit that it is difficult to suggest a substitute for the words, but they think that they can safely be dropped from the section leaving the powers of the Governor General to be exercised only for the safety and tranquillity of British India or any part thereof. We are unable to accept

so wide a recommendation. At the present time these words are required because the Governor General's responsibilities are not confined to the safety and tranquillity of British India; and in the discharge of his functions he is responsible to Parliament and not to the Indian legislature. The omission of the words would in fact lead directly to difficulties corresponding to those experienced in the Colonies to which we have referred in paragraph 60. The words, or some equivalent words, are in our opinion, an essential part of the existing constitution. The matter was discussed in the House of Commons at the time the Act was passed, and we would refer to the arguments then adduced.

Social Legislation.

120. In India the powers of the legislatures to enact laws which will affect the religious rights and customs of the various communities is a question in which the communities are greatly interested. So far as the rights and customs of Hinduism and Islam are concerned this interest is illustrated on the one hand by the evidence tendered by Hindus referred to in paragraph 40 and on the other hand by the resolutions of Muhammadans cited in paragraph 41. A more restrictive proposal is contained in the written evidence tendered by a witness from the Punjab, who would provide in the Government of India Act that no law passed by any legislature shall be valid, if it affects the religion or religious rights and privileges of any class or community in British India. We have no hesitation in rejecting this last mentioned proposal. In India religion enters deeply into the daily affairs of life, and such a restriction might, we think, be interpreted in such a way as seriously to restrict the powers of the legislature. The two specific Muhammadan resolutions before us are not so drastic. One provides that no Bill affecting the interests of Muhammadans and the other that no Bill affecting any community shall be passed, if it is opposed, respectively, by one half of the members voting or by three-quarters of the total number of members of the community in the legislature concerned. In the latter case the question whether the Bill does or does not affect the community is to be determined by the members who belong to the community concerned. In neither case is the proposal restricted to Bills which affect the religion or the religious rites or usages of the community. The proposals as stated have a very wide application indeed, but Mr. Barkat Ali explained to us that the intention in the latter case was to restrict the proposal to Bills affecting exclusively the one community. Even with this restriction we are not, for the reason already given, prepared to support either of these alternative proposals. The existing constitution does already contain general protections against legislation affecting the religion or religious rites and usages of any class of British subjects in India. Previous sanction for the introduction of any such measure in the

central legislature is required by section 67 of the Act. If it has not been previously sanctioned any such measure passed in a local legislature must be reserved for the consideration of the Governor General under the Reservation of Bills Rules. The further provisions which we consider are required, are provisions to secure that such legislation shall not be passed without thorough examination by persons well versed in the law of the community concerned.

Our recommendations indeed follow generally the lines of the remedy suggested by Mr. Jogendra Nath Mukherjee which is endorsed in the written evidence tendered to us by the Hindus of Bengal and Assam. Our recommendations are intended to be applied in the first place to the two chambers of the Indian legislature only, as we think that such legislation will come more frequently before the Indian legislature than before provincial legislatures. If they are accepted, and if they are found in practice to work well, then we think that they might be applied *mutatis mutandis* to the provincial councils also. We would provide in the Legislative Rules, on the example of the House of Commons, for two Standing Committees one each for Bills affecting Hindu and Muhammadan law. After either chamber has given leave for the introduction of a measure falling within either of these categories, it should automatically be referred to the Standing Committee concerned, and no further action in regard to it should be taken until the Standing Committee has reported. Normally, before reporting, we think the Standing Committee should give an opportunity to the community concerned to make any representations in regard to the Bill which it may think fit either orally or in writing. These provisions by themselves would not perhaps go far. The main point is to secure that the Committees are manned by persons of the character required. These should be mainly members of the community concerned and should include persons well-versed, respectively, in Hindu and Muhammedan law, and representatives both of the orthodox and reforming sections of the two communities. In order to secure such representation on the Committees, we would provide that the members should be appointed by a Committee of Selection and here again we would follow the House of Commons practice in regard to the appointment of members of the Standing Committees of that House. We make no definite recommendations as to how the Committee of Selection should be appointed. The members should, however, we think, include the President, the Deputy President and the Leader of the House. It might be found advisable for the Standing Committees and the Selection Committee to be Joint Standing Committees and a Joint Selection Committee of the two chambers. We think that details of this kind might be worked out by the Government of India, and the chambers of the Indian legislature might be consulted later. In view, however, of these suggestions

we recommend that the provision for the nomination of experts in the two chambers of the Indian legislature, which we have recommended for adoption, should include power to nominate, not only experts with regard to particular Bills but experts with regard to particular classes of Bills also. By this means it should be possible, we think, to ensure that persons of all the types required shall be represented on the Standing Committees.

Powers of Legislative Assembly in regard to appropriation of supplies.

121. The Government of Bihar and Orissa make a general observation upon the provisions of the Act under which the power of granting supplies was vested in the Legislative Assembly only. They say if the Council of State had been able to review the resolutions of the Legislative Assembly by the voting of demands it is possible that the policy of destruction adopted during the March session of this year might have been less successful. In the event of any amendment of section 67A of the Act being contemplated, they commend this point for consideration. We ourselves are not, in the present circumstances, prepared to support an amendment of the section on these lines. A suggestion of a different character is contained in the memorandum of the Railway Department of the Government of India which is reproduced in Appendix No. 5. The object of the recommendation is to give the Railway Department greater opportunities of explaining their proposals to the Assembly during the course of the budget discussions. The Railway Department hope to present their budget to the Assembly in advance of the general budget and thus secure some additional time for its discussion. They also state that the question of changing the date of the beginning of the railway year to the first of August and of placing the railway estimates before the Assembly in the middle of September, when it would be possible to supply the Assembly with estimates of the approximate actuals of receipts and expenditure of the previous year, is under consideration. We have not been able fully to examine all the implications of these suggested changes. We, however, support the recommendations unless substantial objections to them are found to be forthcoming on the grounds that it is desirable that the budget estimates considered by the Assembly should be prepared after a close estimate of the actual receipts and expenditure of the previous year is known and also of the fact that these changes would enable the Assembly to devote a greater time to a thorough discussion of the railway estimates. The Railway Department also state that they would welcome the change in the dates for the beginning of the railway year and the presentation of the railway budget on administrative grounds. Though it is not proposed to introduce these changes at once, we support the suggestion of the Railway Department and would recommend that the Act and the rules

thereunder should be amended so as to empower the Government of India (1) to prescribe the date on which the railway year shall begin for budget purposes, and (2) to present the railway budget to the Legislative Assembly separately from the general budget.

G.—*The Secretary of State in Council.*

Control of the Secretary of State in Council over transferred subjects.

122. The powers of superintendence, direction and control of the Secretary of State in Council have been restricted in regard to transferred subjects by the rule made under section 19A. of the Act to the five purposes mentioned in the rule. The corresponding powers of the Governor General in Council have been similarly limited by Rule 49 of the Devolution Rules. These powers of interference are identical save for the inclusion in the rule relating to the Secretary of State in Council of the following additional two purposes :—

(i) to safeguard Imperial interests; and

(ii) to determine the position of the Government of India in respect of questions arising between India and other parts of the British Empire.

We have therefore decided to refer to these two connected questions together.

Sir K. V. Reddy has stated that the rule framed under section 19A of the Government of India Act has so many exceptions that they eat up the rule. He says that it is difficult to suggest an alteration of the rule, but the powers now retained by the Secretary of State are still too large. On the other hand, in regard to the control of the Governor General in Council, the Deccan Sabha, for example, recommend that the powers of control should be limited to the purpose of safeguarding the interests of central subjects only. We have examined the existing restrictions in both cases. It seems to us that in all the cases provided for it is necessary to retain the limitations upon the divestment of control which have been provided. More important than any amendment of the rules is the manner in which the powers still retained are exercised, and no amendment of the rules will affect this. We have alluded to the evidence on this point in Part I above.

Control of the Secretary of State in Council over central and provincial reserved subjects.

123. Finally we turn to those subjects in the administration of which the governments in India remain responsible to Parliament. The Joint Committee in their remarks on clause 33 of the Government of India Bill of 1919 suggested that in the exercise of his responsibility to Parliament which he cannot delegate to any one else, the Secretary of State may reasonably consider that only in exceptional circumstances should he be called upon to intervene in matters of purely Indian interest where the government and the legislature in India are in agreement. We recognise the importance which attaches to the relaxation of the powers of control of the Secretary of State and of the Secretary of State in Council over the official governments in India. It would, however, involve an examination of the actual working of the administration in detail, which has of course not been possible for us to undertake, before we could arrive at a definite conclusion as to whether the existing control is being unreasonably exercised. One witness before us referred to the growth of expenditure upon telegrams as an indication of the excessive control. We have examined the point and find there is no basis for the suggestion. We fully endorse the view of the Joint Committee that the relaxation of the control over the Government of India and the provincial governments exercised by the Secretary of State and by the Secretary of State in Council in matters of purely Indian interest is the goal to be aimed at. We have considered what steps should be taken towards obtaining such a relaxation. We recognise that there is a difference in theory between delegation and devolution of powers, but we think that in their practical application, little difference is likely to be experienced between the two methods of securing relaxation. Difficulties arise when an attempt is made to define the circumstances in which the control should be relaxed, and in fact the cases in which relaxation of control may perhaps be expected appear to depend not only upon the subject to which they relate but mainly upon the magnitude of the issues which they involve. In financial and service matters, action may be taken by definite delegation of powers by rule. In matters of administration, however, the step which should, in our opinion, be taken is to work towards establishing a practice in conformity with the position taken by the Joint Committee that control in cases affecting purely Indian interests should not be exercised. We notice with pleasure that an important practice in regard to fiscal matters has already been established. Relaxation of control on these lines is, in our opinion, a most important channel for constitutional advance within the scope of the Act.

PART V.

CONCLUSION.

124. We had the advantage of considering the evidence and of discussing most of our recommendations in full committee, but our colleagues, Sir Tej Bahadur Sapru, Sir Sivaswamy Aiyer, Mr. Jinnah and Dr. Paranjpye finally decided to write a separate minority report. We find that in that report they have dealt with some matters which we feel we were precluded from considering by our terms of reference, and we therefore refrain from referring to them now. It is necessary to point out that the recommendations in paragraph 91 were the result of an examination of the subject by a sub-committee consisting of Sir Muhammad Shafi, Sir Tej Bahadur Sapru, Sir Henry Moncrieff-Smith and Mr. Jinnah and were unanimously accepted by the committee as a whole. The Maharajadhiraja Sir Bijay Chand Mahtab, Bahadur, of Burdwan has appended to our report a note expressing his views on certain matters.

125. In conclusion we must express our obligations to the Government of India Press for the promptitude and accuracy with which they have responded to our demands which were often necessarily immediate and exacting.

We are greatly indebted to our Secretary, Mr. Tonkinson, for his invaluable help during our investigations and in the preparation of our report. He has displayed the greatest keenness in assisting us in every respect and has devoted himself to his duties in connection with the committee with indefatigable industry involving long hours of work at high pressure.

We have the honour to be

Your Excellency's most obedient servants,

A. P. MUDDIMAN,

Chairman.

MD. SHAFI.

B. C. MAHTAB OF BURDWAN.

A. H. FROOM.

H. MONCRIEFF-SMITH.

Members.

H. TONKINSON,

Secretary.

Delhi, the 3rd December 1924.

NOTE BY THE MAHARAJADHIRAJA SIR BIJAY CHAND MAHTAB, BAHADUR, OF BURDWAN.

I append this note with the object of making it quite clear why I have supported the continuation of Dyarchy. I have done so, not because I am enamoured by the system of Dyarchy, since it is a system which is bound to be cumbrous, and as such is bound to lead to confusions, complexities and, in consequence, perhaps a certain amount of distrust and suspicion in the minds of Ministers who will have to work it; nor does my support mean that I do not look forward to some scheme of Provincial Autonomy being evolved by the Government of India in due course, or that I could be opposed to the aspiration of every patriotic Indian, including myself, to see full Responsible Government in India when the time is ripe for it; but because, the realization of full Responsible Government must inevitably be gradual in India. No sane person can claim otherwise; for India, with its complexities of communal difficulties and the present political activities of those who want Revolution, whether it be White or Red, which means in plain language severance of the British connection, needs a steady political uplifting and no whirlwind reforms which may easily spell disaster. In consequence, at present partial Responsible Government is an inevitable necessity, and in a transitional stage no half-way house appears to me to be possible other than the present system of Dualism with all its inherent defects and irremediable consequences.

Turning to the question as to whether Dyarchy has failed or not, I cannot go to the length of saying that since the inauguration of the Reforms in 1921, it has had a fair enough trial and has failed or that it has been worked properly both by the Government and the people alike. Firstly because, I do not think the real constitutional position was visualised by Ministers who had to work it, nor do I think the action of Governors has been uniform by any means. Some have realized the dividing line between Transferred and Reserved subjects and yet with it have had joint meetings of both halves of the Government, as contemplated under the Government of India Act, whilst other Governors have been the worst enemies of Dyarchy by their well-meant intentions of securing an unified form of Government. This has led to misconceptions and misunderstandings much more than anything else. The inference which I have deduced from the examination of various witnesses, particularly *ex*-Ministers, is that no actual case has been made out to prove that Dyarchy has failed and, therefore, I believe that, given good will and co-operation, the scheme has many possibilities still of achieving the purpose for which it was intended, *viz* , during a transitional stage to be

the herald on the threshold of further political advance. In my opinion, therefore, it would be a political blunder of the first magnitude to denounce, or advocate the immediate discarding of, Dyarchy wholesale, when we find it has only been worked for a little over three years and that in most Provinces, within that very short period, it has, if anything, been a partial success rather than a failure. To be quite candid, some of the Ministers who deposed before us have left on my mind this impression rather vividly that they were denouncing the system not merely for its inherent defects, but also because it undoubtedly put a limitation on the scope of their activities.

If we really want our onward march to be on a well-metalled road which will reach us safely to the Land of Autonomy and full Responsibility we must take as our motto, *festina lente*. I, therefore, hold, there is more scope for real advance and for establishing our fitness to rule by working the dual constitution fully and more successfully than it has been hitherto worked than there is in merely condemning it and asking for Provincial Autonomy as an immediate and irreducible demand. First let us give conclusive proof of our being able to manage successfully the partial form of Responsible Government which we have got for the first time, before advocating what would be, in the present formation of political parties in India and the existing electorates, a leap in the dark.

Now let me turn to the conclusions of the Minority Report.

With the idea of an immediate Royal Commission to examine the Indian Constitution *de novo*, I am not in agreement for I do not consider the present Constitution to be so bad or so unworkable as to necessitate its complete overhauling by Parliament after its having been worked for a little over three years only. Moreover, I am not convinced of what the verdict of such a Commission would be at the present time.

On the other hand, I think it would be wise on the part of the Government of India not to wait till 1929 when a Parliamentary Committee is likely to be appointed—perhaps to re-open every question and re-examine everything—but from now to give effect to our recommendations, and to consider our examination of Provincial Autonomy in Part II of our Report, and then to see if some advance to Provincial Autonomy is possible under existing conditions and, if so, to constitute the machinery necessary for it.

B. C. MAHTAB.

Delhi, the 3rd December 1924.

SUMMARY OF RECOMMENDATIONS.

This summary should be read with the paragraphs of the report in which the recommendations have been made. It is intended to summarise concisely any recommendations made in the report for modifications of the existing law or practice.

The Secretary of State.

PARAS.

1. The control of *the Secretary of State and of the Secretary of State in Council* over the official governments in India in cases affecting purely Indian interests should be relaxed and efforts should be directed towards establishing a practice in this respect 123

The Government of India.

The Executive.

2. The Governor General and the other high officials mentioned in sub-section (1) of section 110 of the Government of India Act should be exempt from the jurisdiction of all Courts and not merely from the original jurisdiction of the High Courts 91

3. The powers of the Governor General in Council to secure by a declaration that the *development of a particular industry* shall be a central subject should be modified so as to relax the existing restriction and allow the power to be exercised with the concurrence of the local government or governments concerned... 95

The Indian Legislature.

4. The Courts should be barred from *premature interference with the Presidents* of the two chambers in regard to action proposed to be taken in either chamber. The recommendation applies to the Presidents of the legislative councils also 91

5. The elected President of the Legislative Assembly should not be required to *vacate his seat as* a member of the Assembly *on* his *acceptance of* that *office*. The recommendation extends to the elected Deputy President of the Assembly, to elected Presidents and Deputy Presidents of the provincial councils and also to Council Secretaries 76

PARAS.

6. *Bills affecting Hindu or Muhammadan Law* should be referred, after leave for introduction has been given, to two Standing Committees. The members of the Standing Committees should consist mainly of members of the communities concerned but should include experts in Hindu or Muhammadan Law, as the case may be, and also representatives both of the reforming and of the orthodox sections of the two communities. They should be appointed by a Committee of Selection. Before any arrangements are made on these lines the two chambers of the Indian legislature should however be consulted 120

7. Power should be taken to enable the Government of India to prescribe the *date on which the railway year shall begin for budget* purposes and also to *present the railway budget separately* from the general budget 121

8. The bar against *women being registered as electors* for the Delhi and Ajmer-Merwara constituencies should be removable by the passing of a resolution after due notice in the Assembly 66

9. The bar against *women being elected or nominated as members* of either chamber of the Indian legislature or of the provincial councils should be removable by the passing of resolutions after due notice in the chambers and the councils 67

10. Special *representation for factory labourers* in the Legislative Assembly should be provided for, if local Governments can make arrangements, by election, and if not, by nomination 64

11. The Governor General should have power to *nominate persons* whether officials or non-officials to be members of either chamber of the Indian legislature as *experts* for particular bills or particular classes of bills ... ...73 & 120

12. The existing *disqualification* from being a member of either chamber of the Indian legislature or of a provincial council which follows *from* a *conviction by a criminal court* should be modified—

(i) by increasing the period of sentence which constitutes a disqualification from six months to one year; and

(ii) by enabling it to be removed, subject to provisions to secure uniformity, by orders of the local government instead of only by pardon ... 72

PARAS.

13. Members of all the legislative bodies constituted under the Act should be *exempted* from—
    (i) serving as *jurors or assessors;* and
    (ii) *arrest and imprisonment for civil causes* during meetings of the legislatures in question and for periods of a week before and after such meetings.

This recommendation should, however, not be dealt with as a question of privilege but by amendment of, or action under, the ordinary law 91

14. The *corrupt influencing of votes within any of the legislative bodies* by bribery, intimidation and the like should be made a penal offence, and this should not be dealt with at present as a question of privilege 91

The Provincial Governments.

The Executives.

15. *Joint deliberation* between the two sides of the Government on important questions should be definitely enjoined by a rule to be included in the Devolution Rules 96

16. The *Joint Responsibility of the Ministry* is the ideal and the Devolution Rules and the Instrument of Instructions should be modified, so far as may be necessary, to indicate this rather than that transferred subjects may be administered by the Governor acting on the advice of a single Minister 98

17. The constitution should provide that a *Minister* should ordinarily get the same *salary* as a Member of the Executive Council in the same province but that this may be varied by an Act of the local legislature so as not to be less than 3/5ths of, or more than the salary payable to a Member of the Executive Council in the same province. Section 52, sub-section (1) of the Act should be amended accordingly 100

18. The powers of *control of the Governor over his Ministers* should be more expressly indicated by the re-drafting of clause VI of the Instrument of Instructions so as to provide that, subject to a power of interference to prevent unfair discrimination between classes and interests, to protect minorities and to safeguard his own responsibility for reserved subjects and in regard to the interests of the members of the permanent services, the Governor should not dissent from the opinion of his Ministers 101

PARAS.

19. Provisions should be made in the provincial legislative rules giving a *Minister* who has *resigned* the right to make in the council a *personal explanation* of the causes of his resignation. The provisions should so far as possible follow English practice... ... 101

20. The *rules of executive business* made by Governors under section 49 of the Act should be amended to provide, where this is not already the case, that,—

(*a*) a Member of Council or a Minister should be able to make a recommendation to the Governor that any case in his own Department should be considered before the joint cabinet or before that side of the Government with which it is directly concerned; and

(*b*) the Secretary of the Department or other officer with a right of direct access to the Governor should inform the Minister of every case in which he differs in opinion from the Minister and of all other important cases which he proposes to refer to the Governor 102

21. The word "may" in clause 2 of rule (2) of the Transferred Subjects (Temporary Administration) rule should be changed to "shall" 103

22. The provisions as regards *Council Secretaries* in the provinces should be modified—

(*a*) so as to provide that they shall get a reasonable salary the amount of which will be determined by an Act of the local legislature; and

(*b*) that on the transferred side the Minister should make recommendations for appointment as Council Secretaries for the approval of the Governor, and that when appointed they should hold and vacate office with the Minister ... 105

23. The following *provincial reserved subjects* should now be *transferred*:—

(*a*) No. 12. Fisheries. In Assam.

(*b*) No. 14. Forests. In provinces in which it has not been transferred already, unless the local government concerned on examination of the position can make out a convincing case against transfer.

(*c*) No. 16. Excise. In Assam.

PARAS.

(*d*) No. 26. From amongst the Industrial matters included in this item the following,—

(*d*) boilers;
(*e*) gas; and
(*g*) housing of labour.

But boilers and housing of labour should remain subject to legislation by the Indian legislature... 93

24. The following action should be taken in regard to other *provincial subjects* :—

(*a*) No. 15. Land Acquisition. Local governments should be consulted as to whether, in so far as it relates to purely provincial land acquisition, this subject cannot be transferred.

(*b*) No. 18. Provincial Law Reports. The High Courts should be consulted as to whether this subject cannot be transferred.

(*c*) No. 27. Stores and Stationery. The existing restriction on the transfer of this subject that it is subject in the case of imported stores and stationery to such rules as may be prescribed by the Secretary of State in Council should be deleted.

(*d*) No. 43. Provincial Government Presses. The question whether this subject cannot be transferred should be examined 93

25. The two schedules of subjects annexed to the Devolution Rules should be examined and the lists should be re-arranged on a more logical basis 93

The Legislatures.

26. Power should be taken to modify by rules the existing stringency of the *control over provincial legislation* which is due to the *previous sanction* provisions by the inclusion of a proviso in sub-section (3) of section 80A of the Act 83

27. The existing provisions, contained in item 5 in the Schedule of provincial subjects annexed to the Devolution Rules, which make,—

(i) the control of the establishment and the regulation of the constitution and functions of new Universities; and

(ii) the Calcutta University, and the control and organization of secondary education in the Presidency of Bengal,

subject to legislation by the Indian legislature, should be deleted 93

PARAS.

28. When *previous sanction* is granted under section 80A or section 80C of the Act to provincial legislative proposals promoted by non-officials the sanction should be available only to the member to whom it was granted and for the particular council sitting when it was granted 84

29. If decided to be necessary the existing law in regard to the *reservation of Provincial Bills* should be modified so as to make it clear,—

(*a*) that a Governor may return a Bill passed by one legislative council for reconsideration by a new council, in whole or in part;

(*b*) that, when the Bill is so returned for reconsideration, whether to the old or to a new council, amendments may be moved in the council to any parts of the Bill if returned for reconsideration in whole and if returned for reconsideration in part to those parts; and

(*c*) the amendments suggested by the Governor are open to rejection or amendment by the council 86

30. In order to enable the *responsibility of Ministers to the Councils* to be enforced provision should be made in the provincial Legislative Council Rules for the following classes of motions :—

(*a*) a motion of no confidence;

(*b*) a motion questioning a Minister's policy in a particular matter; and

(*c*) a motion for the formal reduction of a Minister's salary to be moved at the time when the demands are made for grants.

So far as the latter class of motions is concerned it will be necessary to provide for them when amendments are made to section 52 of the Act in regard to the Minister's salary. So far as the two former motions are concerned in order to prevent them from being moved frivolously and to provide that they should come up for discussion at an early date the rules should provide that the person who gives notice of the motion should show that he has the support of about one-third of the members of the council, and that in that case the President shall direct that the motion shall be included in the list of business on a date not later than 10 days after the date of notice ...80 & 100

PARAS.

31. Rule 30 of the provincial Legislative Council Rules and rule 48 of the Indian Legislative Rules should be amended so as to secure that *motions* may not be moved when a demand is made for a grant *for* the *omission of the whole grant*... 89

32. The Central Provinces Electoral Rules should be amended so as to include an additional constituency comprising the Mandla district. It is for consideration whether the constituency should include Mandla town or whether the town should continue to be included in the urban constituency of small towns in the Jubbulpore Division. When the constituency is created the existing provision in the rules for the nomination of a member to represent this district should be deleted 68

33. The *six months residential qualification* should not be required from candidates *for European seats* in any of the legislative bodies constituted under the Act. In these cases candidates should only be required to have an All-India residential qualification which should not be affected by temporary leave of absence from India 71

34. The representation of the *depressed classes* in the provincial councils should be increased, and the local governments should be asked to formulate proposals in this respect. The representation should be by election, if local governments are prepared to recommend a system of election 64

35. The representation of *factory labourers* in the provincial councils should be increased, and the local governments should be asked to formulate proposals in this respect. The representation should be by election if possible 64

Finance.

36. The *Meston Settlement* should be revised as soon as a favourable opportunity occurs 56

37. The *Member of the Executive Council* in charge of the *Finance Department* should not be in charge of any of the main spending departments 110

PARAS.

38. The Devolution Rules relating to the appointment of a *Joint Financial Secretary* should be modified so as to provide for a power to appoint *Financial Advisers* to the Ministers in regard to [illegible] ... 112

39. Devolution Rule 31 should be amended so as to indicate clearly that it applies not only to the *distribution of revenues* on the occasion of the preparation of the annual estimates of revenue and expenditure but also to the distribution *between Reserved and Transferred Departments* of any revenues which may become available during the course of a financial year ... 110

40. The powers of a Member or a Minister to *sanction re-appropriations* which now only extend to re-appropriation of a grant between heads subordinate to a minor head should be extended, subject to the existing limitations in regard to expenditure which involves a recurring liability and in regard to the communication to the Finance Department of a copy of any order, to any re-appropriation within a grant from one major, minor or subordinate head to another 113

41. In such cases as those relating to the grant of forest rights the provincial *Finance Departments* should prescribe that its *assent* in cases, in which previous consultation with it is required by the rules, may be presumed in cases of even greater importance than those that may now be disposed of by the permanent officials of the Forest Department 114

42. Steps should be taken to obtain a definition of the phrase 'government of India' in section 20, subsection (1), of the Act. The scope of the phrase should extend, for example, to expenditure on the financing of industries by private persons ... 115

43. If the experiments now being undertaken in regard to the *separation of accounts from audit* show that such separation is feasible, and if it is also found to be feasible to *separate provincial accounts* from the accounts of the centre [illegible] action should be taken in both these directions 116

The Public Services.

44. Any action necessary for the *protection of the services* in the exercise of their functions and in the enjoyment of their recognised rights and privileges should be taken 104

PARAS

45. The control over recruitment for the services in the transferred field should be entrusted to the proposed Public Service Commission or Commissions ... 104

46. In the rules for recruitment Government should provide that, with due regard to efficiency, *all communities* should receive due *representation in the public services*. That is, if a due representation of persons, [illegible] to a particular community who have passed a prescribed efficiency bar can be obtained for each service, the community should receive due representation, if necessary by nomination, in each service 104

H. TONKINSON,
Secretary.

Delhi, the 3rd December 1924.

APPENDIX No. 1.

LIST OF PUBLIC BODIES AND INDIVIDUALS WHO HAVE TENDERED EVIDENCE TO THE COMMITTEE.

Madras.

1. Memorandum by Mr. K. Rama Ayyangar, M.L.A.
2. Memorandum by Sir K. V. Reddy, *ex*-Minister, Madras.
3. Memorandum by Mr. C. R. Reddy, M.L.C., Madras.
4. Memorandum by Rao Bahadur M. C. Raja, Honorary Secretary, Madras Adi-Dravida Mahajana Sabha, Madras.
5. Memorandum of the 1921 Club, Madras.
6. Letter from the Chief Whip, the All-India Visvakarman Liberal Federation, Madras, dated the 11th October 1924.
7. Letter from the Joint Secretary, the South Indian Liberal Federation, Trichinopoly, dated the 20th July 1924.
8. Letter from the Joint Secretary, the South Indian Liberal Federation, Trichinopoly, dated the 6th November 1924.
9. Letter from Mr. E. Periyanayakam, High Court Vakil, Madura, dated the 23rd July 1924.
10. Letter from the Chief Whip, the All-India Visvakarman Liberal Federation, Rajamundry, Godavary District, dated the 29th July 1924.
11. Memorandum of the Zamindari Ryot's Association, Ganjam.
12. Letter from Mr. Mehmud Schamnad Sahib Bahadur, M.L.A.
13. Letter from Mr. V. V. Rajaratnam, Karaikudi, S. India.
14. Letter from Mr. T. R. Doraiswamy Iyer and 5 others, Desamangalam, dated the 20th October 1924.
15. Letter from the Vice-President, Madras Adi-Dravida Mahajana Sabha, dated the 13th October 1924.
16. Memorandum of the All-India Association of Clerks of Ordnance Factories, Aruvankadu.

Bombay.

17. Memorandum by Sir Purshotamdas Thakurdas, M.L.A.
18. Memorandum by Sir Chimanlal Setalvad, *ex*-Member, Executive Council, Bombay.
19. Statement of the Government of Bombay regarding Sir Chimanlal Setalvad's evidence.
20. Memorandum by Mr. A. N. Surve, M.L.C., Bombay.
21. Memorandum by Mr. R. G. Pradhan, M.L.C., Bombay.
22. Memorandum by Mr. P. R. Chikode, Belgaum.
23. Memorandum by Mr. B. G. Sapre, Bombay.
24. Memorandum of the Deccan Sabha, Poona.
25. Memorandum of the Bombay Branch of the National Home Rule League.

26. Memorandum of the Bombay Presidency Association.
27. Letter from the General Secretary, All-India Trade Union Congress, Bombay, dated the 18th August 1924.
28. Memorandum by Mr. S. S. Mehta, Bombay.
29. Letter from the Secretary, the Millowners' Association, Bombay, dated the 10th June 1924.
30. Letter from Mr. G. C. Bhate, Roha, District Kolaba.
31. Memorandum by Mr. G. A. Vaidya, Ramawadi, dated the 4th June 1924.
32. Memorandum by Sardar V. N. Mutalik, M.L.A.
33. Letter from the General Secretary, Depressed Classes Mission Society, Poona, dated the 1st June 1924.
34. Letter from Mr. Gobind Amrut Vaidya, Ramwadi, Kathiawad, dated the 18th September 1924.
35. Letter from the President of the meeting of the non-Brahmin Party, Poona, dated the 22nd October 1924.
36. Memorandum by Dr. Kaikhosru K. Dadachanji, Bombay.

Bengal.

37. Memorandum by Sir Provash Chunder Mitter, *ex*-Minister Bengal.
38. Supplementary memorandum by Sir Provash Chunder Mitter, *ex*-Minister, Bengal.
39. Memorandum by Sir Surendra Nath Banerjea, *ex*-Minister, Bengal.
40. Memorandum by Mr. A. K. Fazlul Haq, *ex*-Minister, Bengal.
41. Memorandum by Mr. A. K. Ghuznavi, *ex*-Minister, Bengal.
42. Memorandum by Nawab Bahadur Syed Nawab Ali Chaudhuri Khan Bahadur, *ex*-Minister, Bengal.
43. Memorandum by Mr. A. Marr, Financial Secretary to the Government of Bengal.
44. Memorandum of the Central Administration European Association, Calcutta.
45. Memorandum of the Bengal Chamber of Commerce, Calcutta.
46. Memorandum by Mr. Hem Chandra Das Gupta, Honorary Secretary, All-Bengal Government College Teachers' Association, Presidency College, Calcutta.
47. Memorandum of the Indian Association, Calcutta.
48. Memorandum of certain Hindus of Bengal and Assam.
49. Memorandum of the Bengal Central Rayet Association, Calcutta.
50. Letter from the President, Bengal National Chamber of Commerce, Calcutta, dated the 22nd May 1924.
51. Letter from Khan Bahadur M. Choinuddin, M.L.C., Bengal, dated the 19th October 1924.
52. Letter from the Secretary, Indian Mining Federation, Calcutta, dated the 22nd July 1924.
53. Letter from the Secretary, Indian Mining Federation, Calcutta, No. 1715/RN/196/23, dated the 22nd July 1924.

54. Memorandum by Mr. Surendranath Roy, Senior Munsif, Vishnupur, District Bankura.

55. Memorandum of the Anti-Non-Co-operation Committee, Calcutta.

56. Letter from the Secretary, Central Rayet Association, Calcutta, dated the 21st June 1924.

57. Letter from the Honorary Secretary, District Muslim Association, Dacca, dated the 21st August 1924.

58. Memorandum by Mr. K. Ahmed, M.L.A.

59. Telegram from Mr. Sukhamay Das Gupta, Rangpur, dated the 24th August 1924.

60. Letter from the Secretary, All-Bengal Indian Government Educational Inspecting Officers' Association, Calcutta, dated the 1st September 1924.

61. Letter from the Honorary Secretary, the Employees' Association, Calcutta, dated the 20th September 1924.

62. Letter from the Secretary, Labour Association, Jamshedpur, dated the 29th September 1924.

63. Letter from the Secretary, Hosiery Workmen's Association, Calcutta, dated the 30th September 1924.

64. Letter from the Secretary, Bengiya Krishak O. Raya Sava, Calcutta, dated the 15th October 1924.

65. Letter from the Secretary, Bengal Trades Union Federation, Calcutta, dated the 7th October 1924.

66. Letter from the Secretary, Bengal Trades Union Federation, Calcutta, dated the 16th October 1924.

67. Letter from the Secretary, All-India Postal and R. M. S Union, Calcutta, dated the 14th October 1924.

68. Letter from the Secretary, Calcutta House Owners' Association, dated the 6th September 1924.

69. Letter from Mr. Promothonath Mukherjee, Kalighat, dated the 22nd October 1924.

United Provinces.

70. Memorandum by the Hon'ble Syed Raza Ali, Member of Council of State, Vakil, High Court, Allahabad.

71. Memorandum by Mr. Mohd. Yakub, M.L.A., Moradabad.

72. Memorandum by Mr. C. Y. Chintamani, *ex*-Minister, U. P.

73. Addendum to Mr. C. Y. Chintamani's memorandum received with his letter, dated the 20th September 1924.

74. Memorandum by Mr. Shafaat Ahmad Khan, M.L.C., U. P.

75. Letter from Mr. Akhtar Adil, Vakil, High Court, Agra, dated the 20th August 1924.

76. Memorandum of the U. P. Liberal Association, Allahabad.

77. Letter from the Honorary Secretary, U. P. Liberal Association Allahabad, dated the 26th September 1924.

78. Letter from Kunwar Kavindra Narayan Singh, General Secretary, Sri Bharat Dharma Mahamandal, Benares, dated the 8th September 1924.

79. Letter from the Secretary, Upper India Chamber of Commerce, Cawnpore, dated the 13th August 1924.
80. Memorandum of the Hindustan Chamber of Commerce, Cawnpore.
81. Letter from the Honorary Secretary, District Muslim League, Moradabad.
82. Memorandum by Shaikh Mushir Hosain Kidwani, M.L.A., Gadia.
83. Letter from Mr. Mohmmed Yasin Khan, Farukhabad, dated the 18th August 1924.
84. Telegram from the Secretary, U. P. Ayurvedic Conference, dated the 2nd September 1924.
85. Letter from the Joint Secretary, Benares Liberal League, dated the 18th September 1924.
86. Endorsement from the Secretary, Sri Bharat Dharma Maha mandal, Benares, dated the 10th September 1924.
87. Letter from the Secretary, U. P. Liberal Association, Allahabad, dated the 30th September 1924.
88. Letter from the Secretary, District Muslim League, Moradabad.

Punjab.

89. Memorandum by Mr. Harkishan Lal, *ex*-Minister, Punjab
90. Memorandum by the Hon'ble Sir John Maynard, Member of the Executive Council, Punjab.
91. Memorandum by Punjab Provincial Muslim League, Lahore.
92. Memorandum by Mr. M. Barkat Ali, Vice-President, the Punjab Provincial Muslim League, Lahore.
93. Memorandum by Mr. Gulshan Rai, Lahore.
94. Memorandum by Pundit Nanak Chand, Lahore.
95. Memorandum by Chaudhuri Bahwal Baksh, Zaildar, M.L.A.
96. Memorandum by Dr. Nand Lal, M.L.A.
97. Memorandum by Mr. G. R. Sethi, Amritsar.
98. Letter from Mr. Narinjan Das, Bar.-at-Law, Sialkot.
99. Letter from Mr. Lachman Das, Pleader, Jagadhri, District Ambala, dated the 18th September 1924.
100. Letter from the Secretary, District Soldiers' Board, Jhelum, dated the 21st September 1924.

Bihar and Orissa.

101. Letter from the General Secretary, Bihar Provincial Kisan Sabha, dated the 20th August 1924.
102. Letter from the General Secretary, Bihar Provincial Kisan Sabha, dated the 21st August 1924.
103. Memorandum by the Hon'ble Lala Sukhbir Sinha, Muzaffarnagar, Member of the Council of State.

Burma.

104. Telegram from the Chairman, All-Burma Union Conference, Mandalay, dated the 15th August 1924.

105. Telegram from the Secretary, Nationalist Party, Rangoon, dated the 13th August 1924.

106. Telegram from the Honorary Secretary, the General Council of Burmese Associations, Burma, Rangoon, dated the 15th August 1924.

107. Telegram from some elected members of the Burma Legislative Council, dated the 3rd October 1924.

Central Provinces.

108. Memorandum by Mr. S. M. Chitnavis, *ex*-Minister, Central Provinces.

109. Memorandum by Rao Bahadur N. K. Kelkar, *ex*-Minister, Central Provinces.

110. Letter from the Chief Secretary to the Government of the Central Provinces, No. C /387, dated the 29th October 1924.

111. Memorandum by Mr. D. W. Kathalay, Secretary, Central Provinces and Berar Provincial Bar Association, Nagpur.

112. Memorial by the Berar Maratha Agriculturists Sangh (League), Khamgaon, Buldana District, Berar.

113. Letter from Mr. Pandurang Vithal, Nagpur, dated the 20th August 1924.

General.

114. Memorandum by Mr. J. E. C. Jukes, Officer on Special Duty in the Finance Department, Government of India.

115. Memorandum by Mr. G. H. Spence, Deputy Secretary, Legislative Department, Government of India.

116. Supplementary memorandum by Mr. G. H. Spence, Deputy Secretary, Legislative Department, Government of India.

117. Proceedings of a ladies' meeting held at Simla and resolutions passed therein.

118. Memorandum on behalf of the Parliamentary Muslim Party of the Legislative Assembly.

119. Memorandum of the Railway Department, Government of India.

120. Telegram from Mrs. Cousins, Secretary, Women's Indian Association, Madras, dated the 12th August 1924.

121. Telegram from the women of Sind, Karachi, dated the 3rd September 1924.

122. Letter from the Secretary, Bombay Presidency Women's Council, Bombay, dated the 30th September 1924.

123. Letter, dated the 30th September 1924, from Mrs. U. K. Basu, President of the Ladies' meeting held on the 24th September 1924 in the Donovan Girls' School at Madaripur, Bengal.

124. Letter from the Honorary Secretary, Women's Indian Association, Poona Branch, Poona, dated the 28th September 1924.

125. Letter from the Honorary Secretary, Bombay Presidency Women's Council, Ahmedabad, dated the 15th October 1924.

126. Letter from the Honorary Secretary, Women's Indian Association, Bombay, dated the 18th September 1924.

127. Letter from the Secretary, Bombay Presidency Social Reform Association, Bombay, dated the 30th October 1924.

128. Letter from the Honorary Secretary, Women's Indian Association, Adyar, Madras, dated the 12th August 1924.

129. Letter from the Secretary, Jain Mitra Mandal, Delhi, dated the 15th October 1924.

130. Letter from the General Secretary, the Sadhu Mahamandal, South India, Secunderabad, dated the 10th August 1924.

APPENDIX No. 2.

MEMORANDUM ON THE LEGAL AND CONSTITUTIONAL POSSIBILITIES OF ADVANCE WITHIN THE GOVERNMENT OF INDIA ACT.

I.

The Central Government.

Constitutional Position under the Act

The fundamental characteristics of the existing constitution are that the Act maintains the responsibility of the Government of India to His Majesty's Government and to Parliament. Though it creates a Legislature which it was intended should be representative of the people of India, the Act does not give control over the executive government to that legislature except in respect of legislation and certain financial matters specified in the Act.

Powers under the Act for Advance.

The following sections of the Act, *viz.*, 19A, 36 (5), 43A, 45A, 64, 67 (1), 96B and 96C are the sections which require consideration when determining the possibilities of advance.

SECTION 19A.—*Relaxation of the Secretary of State's Control.*

Section 19A of the Government of India Act gives power "to the Secretary of State in Council, notwithstanding anything in the Act, by rule to regulate and restrict the exercise of the powers of superintendence, direction and control vested in the Secretary of State and the Secretary of State in Council by this Act or otherwise in such manner as may appear necessary or expedient in order to give effect to the purposes of the Government of India Act, 1919".

The rule-making power conferred by this section is subject to the limitation of all subsidiary legislation. That is to say, rules made under the Section cannot affect the structure of the constitution set up by the Government of India Act, 1919, and must be in keeping with the fundamental principles of that constitution.

The intention of the section is indicated in the Memorandum on the Government of India Bill presented by the Secretary of State to Parliament in 1919. The present section was represented in that Bill by clause 23 which also dealt with the permissive relaxation of the powers of superintendence, direction and

control over local Governments vested in the Governor-General in Council, which permissive relaxation is now provided for in section 45A, sub-section (3), of the Act. The Memorandum in referring to clause 23 stated:—

> "It enables the Secretary of State in Council to make Rules regulating and restricting the exercise of the general powers of control vested in the Secretary of State, the Secretary of State in Council and the Governor General in Council under the provisions of the main Act [Sections 2 (2), 33 and 45]."

SECTION 36 (5).—*Constitution of the Governor General's Executive Council.*

Excluding the Commander-in-Chief there are six members of the Executive Council; three of these are required to have the 10 years' qualification. There is thus a practical limitation upon the power of prescribing qualifications under sub-section (5) as rules can only be made in regard to the qualifications of a maximum of three members unless His Majesty increases the number of members of Council under sub-section (2). In regard to these three members also so far as one of them is concerned this assumes the possibility of imposing an additional qualification upon the legal qualification already imposed as regards one member in sub-section (3).

It would be legally possible by rule under section 36 (5) to prescribe that a certain number of Members of the Executive Council shall be appointed from amongst the elected Members of the Indian Legislature. It has further been suggested that it would be legally possible to prescribe that a certain number of Members of the Executive Council should be Indians. The basis of this suggestion is that the word "[illegible]" is also used in clauses (*c*) and (*e*) of section 64 (1) of the Act in regard to electors and members of the two Houses of the Indian Legislature, and that under this provision the qualification of being a member of a particular community has been prescribed in the Electoral Rules.

SECTION 43A.—*Appointment of Council Secretaries.*

It is possible under the Act for the Governor General to appoint Council Secretaries from among the Members of the Legislative Assembly.

SECTION 45A.—*Classification of Subjects.*

It is possible to extend the scope of provincial administration by classifying subjects which are now "central" as "provincial". The limitation upon such action is to be found in the fact that the Act clearly assumes that there shall be a central government to exercise central functions and in which the superintendence, direction and control of the Government of India, in so far as such powers are not relaxed by the Act of Rules, shall be vested. The Act in fact requires the appointment of a Governor General and of at least four Members of Council in addition to the Commander-in-Chief. The Governor General in Council is the authority concerned with the military government of India and therefore must in this respect be left untouched in his authority. The Act also provides for two Chambers of the Indian Legislature and clearly contemplates that those Chambers shall be concerned with a substantial share of the government of India. It therefore would be opposed to the policy of the Act if subjects which are now central were to be made provincial to such an extent that the central government would not continue to exercise a substantial share in the administration of government in India.

SECTION 64.—*Electoral Rules.*

The only possibility of constitutional advance by means of rules under section 64 is in respect of the franchise. Here it would be possible to alter or extend the franchise and it would also be possible to change its basis.

SECTION 67.—*Indian legislative Rules.*

So far as legislative powers are concerned, no rules will affect the statutory restrictions in sections 65 and 67 (2). Further in regard to the functions of the Legislature relating to supply, no rules can extend the powers specified in section 67A. It would be impossible to provide by an amendment of the Legislative Rules that a resolution should be binding upon the Executive Government without an amendment of the Government of India Act. Such action would give the Legislature direct control in administration such as could only be effected by definite statutory provisions. Section 67 (1), indeed, clearly contemplates nothing more than the discussion of subjects.

SECTIONS 96B AND 96C.—*The Civil Services in India.*

Under sub-section (2) of section 96B, the Secretary of State in Council may make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct. Under this provision, the Secretary of State has already made a number of rules including the Fundamental Rules, Rules relating to the classification of services, Rules relating to Appeals, and so on. The rules made under the sub-section may delegate the power of making rules to the Governor General in Council or the local Governments, or authorise the Indian Legislature or local legislatures to make rules regulating the public services. The rules already made do frequently delegate the power of making subsidiary rules to the Governor General in Council or to local Governments. In particular, the Fundamental Rules give power, in regard to the matters with which those rules are concerned, to local Governments to make rules modifying or replacing any of the Fundamental Rules in relation to services under the administrative control of the local Governments other than the All-India Services. Powers already delegated on these lines to the Executive Governments in India could, of course, be extended; and rules authorizing the Indian legislature or local legislatures to make laws regulating the public services could be made and would constitute a constitutional advance. In analogy with the provision in the Fundamental Rules referred to above, such rules could, in regard to the provincial services delegate functions to local Governments, and therefore, in regard to services serving in departments dealing with the transferred subjects to the Ministers. Such rules would constitute a constitutional advance, but before such rules are made, it would be necessary to constitute a Public Services Commission under section 96C. This is, in fact the manner in which the provisions of section 96C affect any constitutional advance in regard to the control of services, and presumably action under section 96C would also precede any action by rules under section 96B which would delegate power to make laws regulating the public services to the

Indian Legislature or to local legislatures. In fact a Public Service Commission under that section would discharge such functions in regard to recruitment and control of the public services as would be assigned to it by rules made by the Secretary of State in Council.

Rules regulating the right of persons in the civil service of the Crown to pensions, and the scale and conditions of those pensions are made under sub-section (3) of section 96B and there is no provision in that sub-section permitting the making of rules delegating the power to make rules to the Executive Governments in India or to the legislatures in India. This, therefore, constitutes a limitation upon the possibilities of constitutional advance under section 96B.

II.

The Governments of Governors' Provinces.

Constitutional Position under the Act.

Perhaps the main feature of the existing constitutions of Governors' Provinces is the separation of functions for which they provide. The constitutions provide for the discharge by the Provincial Governments within their own Provinces of many duties as agents of the Central Government, that is, in regard to central subjects. In regard to provincial subjects authority is, with certain qualifications, definitely committed to the Provincial Governments to which also portions of the revenues of India are definitely allocated in order to enable them to meet the expenditure involved in administering the provincial subjects. The provincial subjects are divided into two classes, the reserved subjects and the transferred subjects. In regard to reserved subjects the constitution maintains the responsibility of the Provincial Government to the Governor General in Council, to His Majesty's Government and to Parliament. The extent of the control of the local legislature over the executive Government in regard to the administration of such reserved subjects was intended to be similar to that of the Indian legislature over the Central Government. Such reserved subjects are

administered by the Governor in Council. The transferred subjects are administered by the Governor acting with his Ministers and in relation to these subjects the constitution provides that the Governor shall be guided by the advice of his Ministers unless he sees sufficient reason to dissent from their opinion in which case he may require action to be taken otherwise than in accordance with that advice. In administering these subjects it was intended that the Ministers should be responsible to the local Legislative Councils.

Powers under the Act for advance.

The following sections of the Act, *viz.*, 19A, 30 (1*a*), 45A, 47 (3), 52 (3), proviso, 52 (4), 52A (1), 52A (2), 60, 72A, 72D (5), 80A (3) (*a*), 80A (3) (*f*), 80A (3) (*h*), 81A, 96B and 96C are those which require consideration in this part of the Memorandum.

SECTION 19A.—*Relaxation of the Secretary of State's control.*

So far as reserved subjects are concerned, the position is the same as indicated in regard to central subjects in Part I. In regard to transferred subjects it is possible to reduce the general powers of control of the Secretary of State and of the Secretary of State in Council still retained in the rule made under the section.

SECTION 30(1*a*).—*Borrowing Powers of Provincial Governments.*

It is possible to reduce the restrictions upon the borrowing powers of provincial Governments contained in the local Government Borrowing Rules.

SECTION 45A.—*Classification of subjects.*

It is possible to change subjects, which are now central, into provincial and to increase the number of transferred subjects. The limitation upon the increase in the number of transferred subjects is to be found in the fact that the Act provides for a reserved side of the Government, that is, the number of transferred subjects could not be increased to such an extent as to be inconsistent with the policy and purpose of the Act. It is possible for the Secretary of State by action under section 46, sub-section (3), to revoke or suspend a council, but in that event such reserved subjects as are retained could be administered by the Governor.

It is also possible to reduce the powers of control over provincial Governments given by the Devolution Rules and to make other amendments in those Rules.

It is also possible to extend the powers of the local legislative councils by reducing the number of subjects which are subject to legislation by the Indian legislature.

SECTION 47(3).—*Constitution of a Governor's Executive Council.*

The number of members of a Governor's Executive Council may not exceed four, and one of them is required to have the twelve years' service qualification. As regards the remaining members rules may be made as to their qualifications in the same way as is indicated in regard to the qualifications of members of the Executive Council of the Governor General in Part I.

SECTION 52(3) *proviso.*—*Administration of Transferred subjects in an Emergency.*

It is possible to modify the Transferred Subjects (Temporary Administration) Rules. On the other hand, however, some rules are required to enable necessary action to be taken in a time of political crisis and to guard against the administration of any transferred subjects being brought to a standstill.

SECTION 52(4).—*Appointment of Council Secretaries.*

It is possible under the Act in cases in which such action has not already been taken, for a Governor to appoint Council Secretaries from among the non-official members of the local legislature.

SECTION 52A(1).—*Administration by a deputy Governor.*

Attention is drawn to the possibility of placing part of a Governor's province under the administration of a deputy Governor appointed by the Governor General and the application of the provisions of the Act relating to Governors' provinces, with such modifications as appear necessary or desirable, to that part of a province.

SECTION 52(2).—*Backward Tracts.*

It is possible to reduce the number of backward tracts, and to modify the exceptions and modifications in the Act which have been prescribed for any particular backward tract.

SECTION 60.—*Boundaries of Provinces.*

It is possible to alter the boundaries of provinces so as to obtain more convenient units of administration for the purposes of ultimate provincial autonomy.

SECTION 72A.—*Electoral Rules.*

As indicated in Part I constitutional advance could be obtained in regard to the franchise and also by including tracts that are now excluded in the areas of constituencies.

SECTION 72D(5).—*Legislative Rules.*

The position is the same as indicated in Part I in regard to the Indian Legislative Rules.

SECTION 80A(3)(*a*).—*Provincial Taxation.*

It is possible to modify the Scheduled Taxes Rules in the direction of giving greater powers of provincial taxation to the provincial governments.

SECTION 80A(3)(*f*).—*Sanction to Provincial Legislation*

This clause is referred to in regard to the remarks made under section 45A as regards reducing the number of subjects which are subject to legislation by the Indian legislature.

SECTION 80A(3)(*h*).—*Sanction to [illegible]*

It is also possible to decrease the number of local Bills which require previous sanction by modifications of the Local Legislature (Previous Sanction) Rules.

SECTION 81A.—*Reservation of Provincial Bills.*

It is possible to reduce the number of Bills which must be reserved for the consideration of the Governor General by modifications of the Reservation of Bills Rules.

SECTIONS 96B AND 96C.—*The Civil Services in India.*

The position in regard to the possibilities of action under these sections has been indicated in Part I.

APPENDIX No. 3.

Statement of particulars regarding the number of electors at the date of the General Elections, 1923.

Province.	Provincial Legislative Councils.											Legislative Assembly.						
	Population (in thousands) (1921 Census.)	Total male population of 20 years of age and over (in thousands) (1921 Census.)	Male literate population of 20 years of age and over (in thousands) (1921 Census).	Male electorate for general constituencies (in thousands).	Percentage of male electors to total male population 20 years of age and over.	Number of general seats.	Male population of 20 years of age and over (in thousands) per general seat.	Male electorate per general seat (in thousands).	Percentage of male electors who voted in contested general constituencies.	Female electorate in general constituencies (in thousands).	Percentage of female electors who voted in contested general constituencies.	Male electorate in general constituencies (in thousands).	No. of general seats.	Male population 20 years of age and over per general seat (in thousands).	Male electorate per general seat (in thousands).	Percentage of male electors who voted in contested general constituencies.	Female electorate in general constituencies (in thousands).	Percentage who voted in contested general constituencies.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
Madras . .	42,318	11,100	2,367	1,185	10·7	85	131	14	38	89	10	243	14	793	17	42·7	13	10·4
Bombay‡ . .	19,291	5,522	1,028	595	10·8	75	74	8	49·5	28	18	141	13	425	11	38·6	3	7·2
Bengal . .	46,695	12,324	2,779	1,034	8·4	92	134	11	38·8	...		181	15	822	12	40·8	.	...
United Provinces .	45,375	12,761	1,142	1,505	11·8	90	142	17	43·5	49	2·5	162	15	851	11	45·2	4	Not available.
Punjab . .	20,685	5,839	566	622	10·7	64	93	10	49·1	. .	...	63	11	531	6	59·6	.	...
Bihar and Orissa .	34,002	8,501	1,102	337	3·9	67	127	5	52·1	.	...	70	11	773	6	43·9	.	...
Central Provinces	13,912	3,601	408	150	4·2	47	76	3	57·4	...		25	5	720	5	41·6	...	...
Assam . .	7,606	2,002	307	223	11·0	33	61	7	42·0	.	..	27	4	500	7	33·3		..
Burma* . .	13,169	3,685	2,284	1,763	47·8	73	50	24	7·1		...	36	4	921	9	23·3†	5	Not available.
Delhi . .	488	164	35	...	...	...	..	...		.		4	1	164	4	20	..	...
Ajmer-Merwara .	495	148	33	...	..	..	...			..	..	3	1	148	3	74·5	.	...

*The figures for this election to the provincial council relate to the general election of 1922 as no general election for the council was held in Burma in 1923; separate figures for female electors in Burma at that election are not available.

†Includes females.

‡Excludes Aden.

APPENDIX No. 4.

Statement showing the monthly balances of the several Provincial Governments for the year 1922-23.

The figures are in lakhs of rupees.

Provincial Governments.	April.	May.	June.	July.	August.	September.	October.	November.	December.	January.	February.	March.
Madras—												
Net balance	50	89	104	105	85	—53	—74	—107	—126	—133	—9	3
Bombay—												
Net balance	286	299	294	280	244	201	162	162	187	243	442	373
Bengal—												
Net balance	77	64	59	15	—3	—29	—24	—40	—52	17	10	87
United Provinces—												
Net balance	215	256	391	445	437	319	229	211	257	266	283	83
Punjab—												
Net balance	—32	—95	—13	209	204	97	53	9	—52	3	102	...
Burma—												
Net balance	575	550	522	477	385	346	325	273	243	217	200	367
Bihar and Orissa—												
Net balance	96	93	99	87	80	77	84	85	77	103	112	121
Central Provinces and Berar—												
Net balance	18	29	56	68	62	47	34	22	14	—18	38	47
Assam—												
Net balance	11	17	14	9	—1	—17	—16	—20	—30	—28	—15	—12

MINORITY REPORT.

CHAPTER I.

PRELIMINARY.

To HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL.

YOUR EXCELLENCY,

We have the honour to submit, for Your Excellency's consideration, our Report on the working of the Reformed Constitution with our recommendations.

Having taken part in the discussion of a considerable portion of the draft Report which was placed before us and having found in the course of our discussions that there were fundamental differences between our colleagues and ourselves, we have considered it our duty to present to Your Excellency our separate Report.

The terms of reference to us were as follows :—

(1) to inquire into the difficulties arising from, or defects inherent in, the working of the Government of India Act and the Rules thereunder in regard to the Central Government and the Governments of Governors' Provinces; and

(2) to investigate the feasibility and desirability of securing remedies for such difficulties or defects, consistent with the structure, policy and purpose of the Act,

(*a*) by action taken under the Act and the Rules, or

(*b*) by such amendments of the Act as appear necessary to rectify any administrative imperfections.

The Committee were authorised to receive written evidence and also to record the oral evidence of such persons as might desire to present themselves as witnesses. Accordingly this Committee met in Simla on the 4th August 1924, and after preliminary discussions *in camera*, proceeded to record the oral evidence of a number of persons who offered themselves as witnesses either in their individual capacity or as representatives of Local Governments, political bodies or associations. Among other witnesses we have had the advantage of recording the oral examination of the following gentlemen who have held the office of Minister or Member of Executive Council and of others who submitted to us their written Memoranda. Messrs. S. M. Chitnavis and Rao Bahadur N. K. Kelkar, *ex*-Ministers, Central Provinces, C. Y. Chintamani, *ex*-Minister, United Provinces, Lala Harkishen Lal,

ex-Minister, Punjab, Mr. A. K. Fazlul Huq and Sir P. C. Mitter, *ex*-Ministers, Bengal, the Hon'ble Sir Abdur Rahim, Member of the Executive Council, Bengal, the Hon'ble Sir John Maynard, Member of the Executive Council, Punjab, Sir Chimanlal Setalvad, late Member of the Executive Council, Bombay.

We regret to say that we have not had the advantage of examining any persons who have held office in the Local Governments of Madras, Bihar and Orissa, Assam and Burma. But we have summarised in brief the opinions of such of them as appended statements to the Reports of their respective Governments towards the end of our Report.

The other officials whom we have examined are Sir Frederick Gauntlett, K.B.E., Auditor General, Mr. J. E. C. Jukes, I.C.S., Mr. A. Marr, I.C.S., Secretary in the Finance Department to the Government of Bengal upon financial questions, and Mr. G. H. Spence, I.C.S., Deputy Secretary in the Legislative Department of the Government of India upon the question of control over provincial legislation by the Governor General. We have also been furnished with a memorandum by the Railway Department in regard to the procedure for the discussion of the Railway estimates in the Legislative Assembly. We have also received statements from the Governments of the Central Provinces and Bombay dealing with certain points arising out of the evidence tendered before us by Rao Bahadur Kelkar and Sir Chimanlal Setalvad respectively.

We beg to point out that, having regard to terms of reference, we felt at the very commencement of our work that although it was open to us to traverse a large ground so far as the enquiry was concerned, yet in the matter of remedial proposals our scope was very much limited by the language used in clause (2) of the terms of reference. Some of us raised this question at the very first meeting of the Committee, and though the remedies which the Committee are competent to recommend must be consistent with the structure, policy and purpose of the Act or of such a character as to rectify any administrative imperfections, we hold that if the inquiry shows that such remedies will not lead to any substantial advance, the Committee are not precluded from indicating their views to that effect.

CHAPTER II.

HISTORY OF THE DEMAND FOR FURTHER ADVANCE.

At the outset we desire to trace the recent history of the demand for constitutional development. On the 23rd September 1921, a resolution was moved in the Legislative Assembly by Rai Jadu Nath Mozumdar Bahadur for the establishment of autonomy in the provinces and the introduction of responsibility in the Central Government. To that resolution an amendment was moved by Mr. Jamnadas Dwarkadas on 29th September 1921, in which he asked the Governor General in Council " to appoint a Committee consisting of officials and non-officials, including members of the Indian Legislature, to consider the best way of bringing about provincial autonomy in all the Governors' provinces and of introducing responsibility in the Central Government and to make recommendations ". After referring to Mr. Montagu's speech on section 84 of the Government of India Act and to the opinion expressed in the Joint Select Committee's Report that " a statutory Commission should not be appointed until the expiration of ten years, and that no changes of substance in the Constitution whether in the franchise or in the list of reserved and transferred subjects or otherwise should be made in the interval, Sir William Vincent, the then Home Member, who spoke on behalf of the Government, proceeded to explain the attitude of the Government as follows :—

Government of India's attitude in 1921.

" I do not say for a moment that these decisions are like the law of the Medes and the Persians, or that they cannot be altered nor do I personally believe that the present transitional scheme of the Government can last as long as is expected. I think we in the Government of India appreciate that as much as any one; indeed, the Secretary of State dealing with this matter himself said : ' If there is a remarkable unforeseen development in Indian conditions in the short space of ten years—because ten years is a very short time, my honourable friend is quite wrong—the Act does not tie the hands of Parliament and there can always be a Commission in the interval.' At the end of the debate, Sir William Vincent suggested a formula which was finally adopted as an amended resolution. It ran thus : " That this Assembly recommends to the Governor General in Council that he should convey to the Secretary of State for India the view of this Assembly that the progress made by India on the path of responsible government warrants a re-examination and revision of the Constitution at an earlier date than 1929." This resolution was adopted by the Assembly without division. The Government of India submitted a report of this debate to the Secretary of State. On the 2nd November 1922, the Secretary of State sent a despatch to the

Government of India copies of which were laid on the table of both chambers of the Indian Legislature. The Secretary of State was then apparently of the opinion that the possibilities of the new Constitution had not been exhausted and he assigned three reasons against further amendment of the Government of India Act. The first reason was that progress was possible under the existing Constitution. The second reason was that the merits and capabilities of the electorate had not been tested by time and experience. The third reason was that the new constitutional machinery had still to be tested in its working as a whole. On these grounds he refused to entertain the proposal for advance as contained in the resolution of the Assembly referred to above. This despatch of the Secretary of State was followed by a resolution moved in the Assembly by Diwan Bahadur T. Rangachariar on the 22nd February 1923, expressing extreme dissatisfaction with it. The debate on this was adjourned, after a certain amount of discussion, *sine die*. Another resolution was moved by Dr. H. S. Gour on the 18th July 1923 which recommended to the Governor-General to move the Secretary of State to carry out his suggestion contained in his despatch on the subject of the further reforms possible under the Constitution. This resolution was carried in the Assembly by 43 votes to 30. It was in the course of his speech in this debate that Sir Malcolm Hailey, Home Member, expounded his views on the process of making rules under Section 19A. We propose to quote the relevant portion of his speech in a succeeding chapter. Early in 1924 a resolution was moved by Diwan Bahadur Rangachariar recommending an early revision of the Government of India Act with a view to secure for India full self-governing dominion status within the British Empire and provincial autonomy in the provinces. An amendment to this resolution was moved by (Pandit Moti Lal Nehru) suggesting the summoning at an early date of a Round Table Conference to recommend, with due regard to the protection of the rights and interests of important minorities, the scheme of a Constitution for India; and after dissolving the Central Legislature, to place the said scheme for approval before a newly elected Indian Legislature and submit the same to British Parliament to be embodied in a statute. The resolution as amended was adopted by the Assembly on the 18th February 1924, 76 non-officials voting for and 48 (23 officials and 25 non-officials) voting against. In the course of his final speech delivered on the same day, the Hon'ble Sir Malcolm Hailey indicated that the Government were prepared to institute an enquiry. " If our enquiry ", he said, " into the defects of the working of the Act shows the feasibility and the possibility of any advance within the Act, that is to say, by the rule-making power provided

Lord Peel's Despatch.

Further Reforms under the Constitution.

by Parliament under the statute, we are willing to make a recommendation to that effect, but if our enquiry shows that no advance is possible without amending the Constitution, then the question of advance must be left as an entirely open and separate issue on which the Government is in no way committed. To that extent the scope of our enquiry goes somewhat beyond that originally assigned to it, but I must again emphasise the fact that it does not extend beyond that scope to the amendment of the Constitution itself ". This debate was followed by the appointment of an official Committee for the purpose of examining the Government of India Act and its working and of exploring the possibilities of amendments calculated to lead to improvements in the working of the machinery. This official Committee was followed by the appointment of the present Committee.

Genesis of the present enquiry.

CHAPTER III.

LEADING FEATURES OF THE ACT.

The leading features of the Reforms as embodied in the Government of India Act, 1919, may be summarised as follows :—In the Governors' provinces the Executive Government has been divided into two halves. The subjects of administration have been classified into transferred and reserved. The transferred subjects are those which are administered by "the Governor who shall be guided by the advice of his Ministers, unless he sees sufficient cause to dissent from their opinion in which case he may require action to be taken otherwise than in accordance with that advice", while the reserved subjects are those which are administered by the Governor in Council. In each Province Legislative Councils have been expanded and the numerical strength of such Legislative Councils varies from province to province. Bengal leads with a number of 139, Madras has 127, the United Provinces have 123, Bombay has 111, Bihar and Orissa 103, the Punjab 93, the Central Provinces 60 and Assam 53 members.

Elected and Nominated Members.

The statute lays down that of the total strength of a Council not more than 20 per cent. may be official members and at least 70 per cent. must be elected. The Governor has the right of nominating a certain number of members; and for the purpose of any Bill he may nominate not more than two persons as experts, excepting in the case of Assam where only one such person can be nominated. The franchise has been widened in the provinces and constituencies have been divided into general and special; a general constituency includes the Muhammadan and European constituencies, while the special provides for the representation of landholders, Universities, Commerce and Industry. The qualifications for electors in general constituencies are not everywhere the same, though generally speaking the principles for the determination of such qualifications are more or less similar. The standards vary, however, between urban and rural constituencies.

The Governor General in Council.

In the Central Government there is no such division of subjects as in the provinces. The Executive Government, consisting of the Governor General in Council, is unitary in character with no responsibility to the Legislature, but directly under the superintendence, direction and control of the Secretary of State. The Central Legislature consists of two Chambers, the Legislative Assembly and the Council of State. The Legislative Assembly consists partly of elected and partly of nominated members, and its strength is laid down by the statute as 140, of whom 26 are official members,

14 nominated non-official members and the remaining 100 are elected. In point of fact, under the rules, there can be 103 elected members and 41 nominated, of whom 26 may be officials and one a person nominated as the result of an election held in Berar. Power is reserved, however, under the Act to increase the number of members in the Assembly and to vary the proportion which the classes of members bear one to another, subject to the condition that at least five-sevenths of the members of the Assembly shall be elected and at least one-third of the other members shall be non-officials. The maximum number of members of the Council of State is fixed at 60. As at present constituted, it consists of 34 elected members, 6 nominated officials and 20 non-official nominated members. Ordinarily [illegible], no Bill can be deemed to have been passed unless it has been agreed to by both Chambers.

Powers of the Legislatures.

It is necessary to point out that the powers of the Provincial Legislatures as well as of the Central Legislature in regard to the budget have in some respects been increased compared with those existing before the passing of this Act. Excepting in regard to certain subjects which are protected by section 67A from the vote of the Assembly and discussion by either Chamber, the proposals of the Governor General in Council for the appropriation of revenues or money relating to heads of expenditure are submitted to the vote of the Assembly in the form of Demands for Grants. If the Assembly refuses a grant and the Governor General in Council is satisfied that it is essential to the discharge of his responsibility, the Governor General in Council has the power of restoring such demand. Special powers are reserved to the Governor General enabling him to authorise in cases of emergency such expenditure as may, in his opinion, be necessary for the safety, tranquillity or interests of British India or any part thereof. The power of certification is further reserved to the Governor General in respect of any Bill, provided he is satisfied that it is essential for the safety, tranquillity or interests of British India or any part thereof. The procedure in regard to certification is laid down by section 67B. The Governor General has also the power, in cases of emergency, to pass ordinances for the peace and good Government of British India to operate for a period of six months at a time.

Similarly, in regard to Governors' provinces, the procedure is laid down with regard to the budget by section 72D. The proposals of the Local Government for the appropriation of provincial revenues and other moneys are submitted to the vote of the Council in the form of Demands for Grants. The Governor has the power of restoring any demand refused by the Council, if it relates to a reserved subject, provided that he certifies that the expenditure in question is essential to the discharge of his responsibility for

the subject. The Governor has also the power of preventing the introduction of any Bill if he certifies that that Bill or any part of it affects the safety or tranquillity of his province or any part of it or of another province, and upon such certification the proceedings are dropped. Similarly, where Legislative Councils refuse leave to introduce or fail to pass, in a form recommended by the Governor, any Bill relating to a reserved subject, the Governor may certify that the passage of the bill is essential for the discharge of his responsibility for the subject and thereupon the Bill is deemed to have passed. It is important to bear in mind here that the power of control vested in the Secretary of State is laid down by sections 2 and 33 of the Government of India Act. The powers of the Local legislatures are laid down in section 80A, but there are certain classes of laws which they cannot make or take into consideration without the previous sanction of the Governor General. That power is, no doubt, exercised subject to the provisions of this Act and the rules made thereunder. In regard to the transferred subjects, the manner in which the power of superintendence, direction and control over the local Governments vested in the Governor General in Council is to be exercised, is prescribed by rule 49 of the Devolution Rules.

Central control.

We have in the above paragraphs tried to summarise some of the leading features of the present Act so far as it affects the Central Government and the Provincial Governments. It seems to us that the immediate purpose of the Act of 1919 was to establish what is now generally known as the system of dyarchy in the provinces and no responsibility in the Central Government. So long as this Act continues to be on the Statute Book, it is impossible to dispense altogether with the classification of subjects into reserved and transferred. It therefore follows from clause 2 of the terms of reference by which we are bound that the utmost limit of any positive suggestions open to us is the transfer of more subjects or the amendment of certain rules or even of the Act itself in matters of detail for the rectification of administrative imperfections.

Dyarchy an indispensable feature.

CHAPTER IV.

CONSTITUTIONAL RELATIONS OF GOVERNORS, MINISTERS AND EXECUTIVE COUNCILLORS.

Constitution of Local Governments.

The three presidencies of Madras, Bombay and Bengal have, since the initiation of the Reforms, been presided over, as they generally were before, by Governors recruited from the public life of England. The other provinces have been presided over by Governors recruited from the Indian Civil Service excepting for a period of less than a year when Lord Sinha held charge of the province of Bihar and Orissa. In Madras, Bombay and Bengal the Executive Councils have consisted of four members, two of whom have been members of the Indian Civil Service and the remaining two non-official Indians. In the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces and Assam, the Executive Councils have consisted of two members, one taken from the Civil Service and the other from among non-official Indians, excepting in Bihar where for a period of nearly two years there were three members, two of whom belonged to the Indian Civil Service. So far as we know, in three provinces, namely, the United Provinces, the Central Provinces and Madras, the portfolios of law and order have been placed in charge of Indian members of the Executive Councils and only in one province, namely Bihar and Orissa, since the reduction of the size of the Executive Council the Indian member of the Executive Council has held the portfolio of finance. This represents generally the constitution of the reserved half of the Executive Government in the provinces. So far as the transferred half of the Executive Government is concerned, in Madras and Bombay three Ministers have administered the transferred subjects. In Bengal, too, there were three Ministers during the first three years, but after the resignation of Mr. S. N. Mullick in the early part of this year, the third vacancy was not filled. In every other province, there have been two Ministers in charge of the transferred subjects except in Bengal and the Central Provinces, where owing to the opposition of the Swaraj party in the Legislative Councils, the transferred departments are now administered by the Governor.

The Governor's position.

The constitutional position of the Governor in relation to his Executive Council is laid down by section 50 of the Government of India Act. The members of the Executive Council are appointed by His Majesty. The Governor has the power under section 49 of making rules of business. In the event of a difference of opinion between him and his Executive Council, the Governor in Council is bound by the opinion and decision of the majority of those present, and if they are equally

divided, the Governor or other person presiding has a second or casting vote. In cases relating to the safety, tranquillity or interests of his province, the Governor has under section 50 (2) the power of overruling his Executive Council.

The Governor in Council is subject to the superintendence, direction and control of the Government of India [illegible] of the Secretary of State, subject, of course, to the provisions of the Act and the rules made thereunder.

Ministers.

Ministers are appointed by the Governor and hold office during his pleasure. Ordinarily, they are appointed from among the elected members of the local Legislature, but it is open to the Governor to appoint as a Minister a person who is not a member at the time of his appointment, but such person cannot hold office for a period longer than six months unless he is or becomes one.

The Governor and his Ministers.

As regards the constitutional relation of the Governor to his Ministers, some comment has been made on it in the course of the evidence recorded by us. That relation is laid down by section 52 (3) as follows:—"In relation to transferred subjects the Governor shall be guided by the advice of his Ministers, unless he sees sufficient cause to dissent from their opinion, in which case he may require action to be taken otherwise than in accordance with that advice." It has been stated before us (we have particularly in view the evidence of Rao Bahadur N. K. Kelkar, late Minister in the Central Provinces) that this section reduces the position of a Minister to that of a mere adviser to the Governor. We do not agree with this view. In our opinion the Governor is bound to accept the advice of his Ministers except when he sees sufficient cause to dissent from their opinion, in which case he can overrule them. It would be wrong to hold that in view of this section Ministers cannot be said to administer the subjects in their charge. At the same time we are bound to point out that the power given to the Governor of overruling his Ministers and directing a course of action contrary to their advice is wholly opposed to constitutional ideals or usage. No similar provision entitling the Governor to override the Ministers and to dictate a course of action contrary to their advice is to be found in the Constitution of any responsible government.

Joint Select Committee's view.

The Governor, said the Joint Select Committee, "should never hesitate to point out to the Ministers what he thinks is the right course or to warn them if he thinks they are taking the wrong course. But if, after hearing all the arguments, Ministers should

decide not to adopt his advice, then, in the opinion of the Committee, the Governor should ordinarily allow Ministers to have their way, fixing the responsibility upon them, even if it be subsequently necessary to veto any particular piece of legislation. It is not possible but that in India as in all other countries, mistakes will be made by Ministers, acting with the approval of the majority of Legislative Council, but there is no way of learning except through experience and by the realisation of responsibility." If we may say so, a generous interpretation like this of the provisions of the law would seem to be far more in harmony with the spirit of the Constitution than the view taken by some Governors. We hold the opinion that this power of overriding the Ministers vested in the Governor, apart from its being incompatible with a correct view of the relation of a constitutional Governor to his Ministers has in some instances given rise to friction between some Governors and their Ministers and weakened the position of the latter.

CHAPTER V.

WORK OF THE LEGISLATURES.

We now propose to review the work of the Legislatures, but we consider it necessary to preface our remarks by reference to two letters of the Government of India addressed to the Governors in Council. The first letter dated 23rd April, 1923, called for a report "to enable His Excellency the Viceroy to make a comprehensive and comparative survey of the operation of the reformed system of Government in the various provinces, the direction in which the strength or weakness of the system has been manifested, the lines on which the possibility of further progress and development or the necessity for greater elements of stability has been indicated and its effects on the administration and on the general political situation." The main heads on which information was desired were (*a*) the Executive Government, (*b*) the Legislature, (*c*) the constituencies and the public, (*d*) political agitation, and parties outside the Reforms scheme and other influence on it. In compliance with this the Governors in Council submitted their reports to the Government of India on various dates in 1923.

The second letter was dated 8th April 1924. After quoting from the speeches of the Home Member delivered on the 8th and 18th February 1924, the letter in question proceeded to state: "the Government of India consider that the most profitable course to adopt, and one the likely to be most helpful to His Majesty's Government, would be to present in the first place a picture of the working of the system in the last three years, both in the legislative and in the administrative spheres attempting to separate as far as possible features of the situation which appeared to be due to characteristics of a different description. It would be impossible to base on the experience of the last three years any judgment of more than temporary validity as to the suitability of institutions such as the Act envisages to the needs and capacities of India; but a clear and discriminating appreciation of the present position will afford material not only of great value for the present purpose, but of the highest use for those who will have to reassess the position when Parliament appoints a statutory Commission."

The letter continued: "The basis of the investigation should be determination of difficulties arising from, or the defects inherent in the working of the present transitional Constitution. But it is desired in broader and more general terms, to see how far the situation can be improved without taking measures so far reaching as to involve fundamental changes in the policy and

purpose of the Government of India Act. The Government of India do not desire to restrict unduly the character of such proposals or to place too narrow an interpretation on the terms in which local Governments should commit themselves to the enquiry, subject always to the major limitation laid down above and particularly in the public pronouncements in the Indian Legislature which have been cited."

Finance and Taxation.

(1) The reports of several of the local Governments are unanimous in their acknowledgment of the sense of responsibility which actuated the Legislatures during a period of admittedly severe financial stringency in dealing with measures of finance and taxation. The Councils showed a reluctance under these conditions, which was perhaps natural, to impose fresh taxation, partly because of a feeling that but for the Meston settlement there would be no necessity for further taxation and also under the impression that there was considerable room for retrenchment in administration.

Bombay.

Thus, the Government of Bombay, in their letter of the 21st July 1923, say of the action of the Legislative Council in insisting upon retrenchment to the extent of Rs. 60 lakhs in the Budget of 1922-23. "The manner in which they attained this end was eminently practical. Instead of attempting to reduce the total by rejecting or reducing various Budget demands in detail, they wisely took the course of rejecting the Entertainments Tax Bill and threatened the rejection of the Stamps Bill if their demand for retrenchment was not sufficiently met. There is no question that the Legislative Council on this occasion felt its powers and used them wisely and justifiably. The Bill which was rejected has been subsequently passed."

Madras.

In Madras, according to the local Government's letter of the 16th July 1923, "The Council itself has urged large expenditure in many directions and has directly promoted it in the case of the subordinate services and the village officers. It has proposed schemes such as the creation of an Andhra University, the grant of free meals throughcut the presidency to school children of the poorer classes, and large increases in the number of medical schools and colleges." On the other hand the Council pressed continuously for economy in expenditure. There was a certain amount of unwillingness on its part to pass taxation measures, but its opposition was not based in every instance on the financial character of the proposal as is demonstrated by the fact that it gave its assent to the enhancement of court fees and stamp duties, but rather on an anxiety to prevent the additional burdens, from falling on the

shoulders of the poorer class of litigants. On the whole, say the local Government, "the Council has received favourably all the Government measures placed before it." The sense of responsibility of the Council in dealing with the Budgets is brought out by the admission of the Government that there were few occasions on which they had to restore grants rejected by the Council.

United Provinces.

The United Provinces Government, in their letter of 22nd August, 1923, give credit to the Council for "agreeing, within nine months of its dissolution to place moderate additional burdens on the tax-payer in order to maintain the provincial finances on a sound basis".

Punjab.

In the Punjab, the local Government say in their letter that the Council was reluctant to impose new taxation and attribute this attitude to a very strong feeling that "the province has been over-assessed in the matter of its provincial contribution" and also to a desire for retrenchment. Also, there has undoubtedly been, it would appear, the fear of the electorate. At the same time it is acknowledged by the Government that "when excess grants were presented to it over and above what was voted, it showed its disapproval of the expenditure incurred, but did not refuse to vote the excess demands".

Bihar and Orissa.

Equally striking is the testimony of the Government of Bihar and Orissa in their letter of the 14th August 1923, which remarks that "while the Council has shown its readiness to provide money by taxation for necessary services unquestionably it means to control to the utmost of its power the expenditure of money so raised.

The Meston Award.

It would be relevant in this connection to refer to the Meston settlement, under which each of the local Governments has got to contribute certain sums of money to the Central Government (*vide* rule 17). In the financial year 1921-22 Madras paid Rs. 348 lakhs, the United Provinces Rs. 240 lakhs, the Punjab Rs. 170 lakhs, Burma Rs. 64 lakhs, Bengal Rs. 63 lakhs, Bombay Rs. 56 lakhs, the Central Provinces Rs. 22 lakhs and Assam Rs. 15 lakhs. The rules provide minutely for reduction in the contributions, the withdrawal of balances, the interest on provincial balances, capital expenditure on irrigation works, advances by the Government of India, powers of sanctioning transferred expenditure, the establishment of a famine insurance fund, taxation and borrowing, and allocation of revenues for the administration of transferred subjects. Practically every Government has entered a protest against the injustice of the Meston award, Madras, Bombay, Bengal, the United Provinces and the Punjab are united in their demand for

the immediate revision of the settlement; several of them urge that the unwillingness of local Councils to shoulder new financial responsibilities in the form of fresh taxation is to a great extent attributable to the sense of injustice created by this award. Upon the materials before us it is impossible to examine the merits of the case for each province or to suggest an alternative to the Meston award. We think that this is a task which can best be performed by a body of financial experts and even so we apprehend that it would be extremely difficult to arrive at any satisfactory solution independently of large and substantial alteration in the Constitution. Any temporary expedient which may be adopted for the relief of any particular province is bound to be resented by other provinces, as was the case when Bengal got a remission of its contribution for a period of three years. Whether a system of provincial contributions will exist in future or the necessity of provincial contributions will be obviated is a question which will require to be examined on the basis of fuller information than we possess. In any case we are firmly of the opinion that the earliest possible opportunity should be taken to put provincial finances on a sound footing, without which we think the development of the provinces must continue to be retarded.

Law and Order.

(2) A great deal has been said, since the introduction of the Reforms, of the unwillingness of the Legislatures to give full support to the Executive in the maintenance of law and order. Some of the local Governments have referred to the opposition which they had to encounter at the hands of non-official members of the Legislative Councils to the measures which in their opinion, were necessary to deal with disturbances of the public peace. That this view is not shared by all the local Governments is proved by the statement of the Madras Government that "the Council has rendered full assistance to the Executive in all measures intended to preserve the peace and order of the country." The Punjab Government have likewise expressed their appreciation of the attitude of the Council towards Government measures as being "sympathetic and satisfactory." We may also refer in this connection to the discriminating support consistently given by the Legislative Assembly and the Council of State throughout the first three years of the Reforms to measures initiated by the Government of India in support of law and order. It is true there has been a meticulous scrutiny of the actions and policy of the Executive in this respect on the part both of the Central Legislature and of the provincial Councils. But it must be borne in mind that they came into existence very shortly after the deplorable events in the Punjab, and the first resolution to be considered by the Legislative Assembly was one dealing with the excesses committed in the course of the administration of martial law in that province. Regard must also be

had to the fact that law and order is a reserved subject and the distinction made by non-official members of the Legislative Councils between the reserved and transferred halves of the Government applied perhaps in a special degree to measures to which the Executive had to resort for coping with defiance of authority. Nor must it be forgotten that there have occasionally been instances of the excessive use or missue of authority in the name of 'law and order' and that a critical attitude on the part of the Legislature is an inevitable consequence of this. We have been impressed by the strength and volume of the evidence in favour of the transfer of law and order to popular control. We attach particular importance to the views expressed before us by most of the *ex*-Ministers that the difficulties experienced by the Executive, such as they are, are incidental to the peculiar circumstances of the system. As typical of the opinion of responsible public men, is the following statement by Mr. Chintamani in the course of examination before us:

"*Q.*—Suppose law and order are transferred. What do you think would be the attitude of the non-official members of your Council on any critical occasion if it became necessary for the Minister to take any strong action either by legislation or otherwise?

A.—Their attitude would be more or less the same as at present, namely, when the Government or Minister is able to convince the Legislative Council that an occasion has arisen for employing measures not more stringent than the necessities of the situation demand, then the Legislative Council will give its support."

Mr. Chintamani denied that the United Provinces Council was hostile to law and order and instanced the support given by the Council to the enforcement of the Seditious Meetings Act in four districts in Oudh, but he added that the Council would not be worth its existence if it were not critical. We have also had the statements of *ex*-Ministers like Mr. S. M. Chitnavis from the Central Provinces and Sir P. C. Mitter from Bengal, both of whom are landlords with a considerable stake in the country, expressing confidence that a fully responsible Legislature would not shirk the duty of supporting the Executive during a period of unrest or in a crisis. Sir P. C. Mitter indeed went further and declared that in existing circumstances, the Executive would be more prone to laxity than the Ministers as it could not feel assured of the support of the majority in the Legislature. This view has received further confirmation from the evidence of the Honourable Sir John [illegible] a member of the Executive Council in the Punjab who said: "In one case, the Ministers were agreed together in taking a more uncompromising view of the obligation of maintaining law and order than the two Executive Councillors were prepared to take."

The Depressed Classes.

(3) We have had a considerable volume of evidence both written and oral, on the subject of the treatment of the depressed classes in the various provinces. The problem is not of the same magnitude and acuteness in all the provinces, but we are of the opinion that the records of the Legislatures are a convincing proof of the anxiety of representatives of the people to include the welfare and development of the depressed classes among the subjects demanding prominent attention. Legislation and resolutions dealing with primary education, rural credit, settlement of labour disputes, water supply, forest grievances have had as their main object the raising of the status and the promotion of the welfare of the backward communities. We desire to draw attention to an extract from a speech delivered on the 21st July 1924, by His Excellency Sir Frank Sly, Governor of the Central Provinces, in reply to an address presented to His Excellency by a Mahar deputation: "During my long service I have seen a great advance among the depressed classes, an advance to my mind greater than has been made by any other community within the same period. I have known individuals of the Mahar community rise to position of importance and wealth and I find them taking part in the trade of the country, and some of the most important contractors are Mahars. Your education is increasing rapidly, and I find a demand amongst Mahars for facilities for primary education." In the same speech His Excellency Sir Frank Sly stated: "There is no political party in India which does not recognise that the position of the depressed classes is a serious difficulty on the road towards full responsible government. The disabilities of the depressed classes are recognised by all political parties, whether extremists or moderates, and it is the desire of those political parties that this disability should be lessened and removed as soon as possible." Resolutions have been passed by several Councils removing the disabilities as regards drawing water from public wells, attending schools maintained at the public expense, etc. We would in this connection refer to the evidence given by Mr. A. N. Surve, representative of the backward communities in the Bombay Council, before the Committee.

Q. During the last three years special facilities have been given to them for admission into educational institutions? *A.* Yes.

Q. Both for the non-Brahman and for the backward classes? *A.* Also for Muhammadans.

Q. But not for the advanced classes? *A.* No.

They do have whatever they enjoyed before.

Mr. Surve also stated regarding the education of the Mahars, the Chamars and Bhangis who form various sub-sections of the depressed classes: "As far as their education is concerned, since

the reformed Councils we have made some progress. The Government has issued a circular that if any school does not admit a student belonging to the depressed classes, that fact will be taken as sufficient ground to take off the grant. Similarly, a resolution was passed in the Bombay Legislative Council whereby the wells and springs are thrown open simply as a matter of a resolution to the depressed classes. That resolution applies only to those wells and springs which are maintained at the expense of the Government or local bodies.

Q. You said that the Government has issued a circular removing some of these disabilities? *A.* Yes.

Q. Which part of the Government? The reserved half or the transferred half? *A.* I should think the transferred half. My friend Mr. Paranjpye was instrumental in doing that.

Mr. Surve also expressed his satisfaction at the progress made by the backward communities in regard to education and mentioned the fact that several measures had been adopted by the Bombay Council on the subject.

We also quote below the evidence of Sir P. C. Mitter on the subject

Sir P. C. Mitter's view.

Q. Who are the depressed classes in Bengal, what is their position and what are their difficulties? *A.* The so-called lower classes—mochis, chandals, haris, doms, etc.

Q. What are their disabilities? Are they allowed to draw water out of a common well? *A.* In most places—not in all places. There is no acute problem in Bengal so far as the depressed classes are concerned.

Q. What about Namasudras? *A.* In some places they are not allowed in School hostels. Certain cases came up to me. I ordered they must be allowed and I never heard anything after that.

Q. But were your orders carried out? *A.* Absolutely, higher classes don't object, most of them have no strong feeling.

Q. Will you please tell the Committee what is exactly the extent of the problem there? *A.* Very little—nothing serious.

(*Mr. Chairman*). *Q.* Is not it the case that the depressed classes generally live in their own villages—they don't live in mixed villages? *A.* Oh no, they always live in mixed villages. There are a number of them opposite my family dwelling house in my village.

(*Mr. Chairman*). *Q.* Yes, but I think the Bengal village is a very different thing from the village up-country—the houses are much more separated—is not that so? Everyone has his own little plot and the villages are spread over much more ground? *A.* Yes.

(*Mr. Chairman*). *Q.* And the water question is very simple? *A.* All castes take their water from the tanks. Nobody objects to that, whatever his caste may be.

Q. Then what are exactly the social and religious disabilities under which a member of the depressed classes finds himself in Bengal? *A.* It is more a creation of some ambitious men. There is no very serious disability.

Q. Now supposing there was to be provincial autonomy in your province, do you, with your knowledge of Bengal, think that the position of the depressed classes under responsible government would be worse than it has been in the past, or will it be better than it has been in the past, or will it be about the same? *A.* It will certainly be very much better. I don't think the depressed classes have had any such attention from the Government in the past as during the last three years in Bengal.

United Provinces Liberal Association's View.

With regard to the position of the depressed classes in the United Provinces Pandit Gokaran Nath Misra and Pandit Hirdaya Nath Kunzru said in the course of examination :—

Q. With regard to the untouchables in your province, what is the attitude of the educated classes towards them? Is that one of sympathy and desire to uplift, or is that one of antogonism or indifference? *A.* It is one of sympathy and growing sympathy. Besides the problem has neither been acute—so acute in the United Provinces as for instance in Madras or Bombay.

Q. In your experience is there any instance of any action in the Legislature, administrative or legislative against the interests of the untouchable classes? *A.* We have taken no action against the interests of the untouchables.

Q. Apart from such negative conduct has there been any attempt on the part of the Legislative Council to do anything for uplift—for the education or other uplift of the untouchables? *A.* I am not sure of the sum voted this year. But the Legislative Council every year used to set apart a certain sum for the education of the depressed classes. In the District Boards Bill we introduced a provision compelling the Government to nominate one member of the depressed classes to a district board where the depressed classes have not been able to get themselves elected to that Board. Thirdly, perhaps that does not come within the action taken by the Legislature. I was going to say that there was a member of the depressed classes in our Council and we approached him just in the same way as we approached every other member of the Council.

Q. So far as you know, has more been done during the post-reform period or during the pre-reform period for the uplift of the

depressed classes by the Council and the Government? *A.* I think as the sympathy is growing, naturally a time comes when more and more measures are taken for the uplift of the depressed classes.

Q. Has Government done more for the depressed classes since the reforms or before the reforms? *A.* I can think of no measure passed before the reforms with special reference to the depressed classes.

Mr. Misra : May I add a little at this stage? With regard to the attitude not only of the educated people but of the uneducated people in the United Provinces towards the depressed classes, I must say that their attitude has never been a hostile one. Even with regard to the temples which are situated in Ajodhya, Benares and Muttra, where I have personally been a number of times on religious visits, I have never found any people of the depressed classes being excluded from visiting those temples. They have gone along with the rest of the *Mela* as it is called, or with the rest of the crowd. With regard to the educated people, their attitude has been always one of growing sympathy.

It is recognised by close observers of Indian life that the movement for the amelioration of the conditions of the depressed classes is spreading with remarkable rapidity and the existence of special organizations for this purpose maintained and conducted for the most part by members of the higher classes coupled with the efforts of the Legislatures in the same direction afford in abundant degree indications of the awakening of the social conscience. We do not say or even intend to suggest that the problem does not exist nor do we desire to minimise its magnitude. At the same time we think that it is not fair to exaggerate it or present it as if nothing was being done to solve the problem. The problem of the depressed classes has existed for much a longer period than the history of the Reforms. The awakening of the social conscience to which we have referred above and the active measures taken for the amelioration of their position both inside the Councils by the representatives of the people and outside warrant us in our firm belief that the problem can only be effectively solved under a system of responsible government.

The Development of Parties.

(4) Much insistence has been laid by some of the local Governments on the nebulous nature of the party system in India and on the essential connection between a development of parties based on political principles and the growth of responsible government in this country. Development, we have been told, has tended to be more on communal than on political lines, especially in Madras, Bengal and the Punjab. We shall briefly refer to the evidence on this point. The Hon'ble Sir John Maynard informed the Committee that divisions in the Punjab were now beginning to be on

" wholesome and natural lines " into urban and rural interests. A similar inference may be drawn from the view of the United Provinces Government that Liberals and Progressives lent their support to the Ministers while the reserved half of the Government could rely on the support of the landlords and Muslims. We observe that in Madras the local Government state that there have been several secessions from the non-Brahmin party and the division is now approximating to one of Progressive from ultra-Radicals. We are also informed that a united Nationalist party has recently been formed in the Madras Council with an influential following and that this party contains several men of the old Ministerial party as well as Swarajists and Independents many of whom are Brahmins. The explanation has been offered by several witnesses that the obstacle in the growth of political parties in this country is almost entirely due to the fact that the dominating aim of all the groups is the same, namely, the attainment of responsible government. This view has been echoed in the letters of the Madras and United Provinces Governments, and it is one with which we find ourselves in entire agreement. There can be no doubt that commonness of aim obliterates to a large extent differences in method except when they tend to be on questions of principle and not of procedure or details. Besides most of the *ex*-Ministers whom we have examined have pointed out the insuperable difficulty of consolidating their positions in relation to the non-official members of the Council on account of the division of subjects into reserved and transferred. This difficulty was brought into relief from the very commencement of the Reforms by the practice followed by Governors, except perhaps, in Madras, of choosing their Ministers as individuals from the Legislative Councils without particular regard to the consideration of a common policy and by their failure to observe the principle of collective responsibility.

The atmosphere.

(5) In judging of the work of the Legislatures we think regard must be had to the atmosphere which has prevailed since 1920. The Government of India Act came into force at a time when the deepest feelings had been stirred in the country by events which took place in the Punjab in 1919. The Non-co-operation and the Khilafat Movements were in full swing and a considerable section of the people who otherwise might have sought election abstained from participation. The first Councils and the Assembly were mainly composed of the Liberals, Landlords, Independents, or politicians like the non-Brahmins in Madras who did not belong either to the Non-co-operation or the Moderate party. We are aware that in certain quarters it has been urged that the abstention of a considerable section of people such as the Non-co-operators does not

enable us to judge adequately of the working of the Reforms. It must be borne in mind that at the time we are speaking of the Swaraj party had not come into existence and its present members belonged to the Non-co-operation school the policy of which was to boycott the Councils. It was in such an atmosphere that certain classes of people decided to enter the Councils to work the Reforms. In their attempt to do so they incurred considerable odium and hostility on the part of large sections of those of their own countrymen who had joined the Non-co-operation Movement, they suffered in their popularity and influence; but they decided to give and did give the Reforms their best support. Inside the Councils it is but fair to admit that the atmosphere which generally prevailed was one of friendliness and helpfulness to the Government and the non-official members evinced a keen desire to work the Reforms in a spirit of reasonableness. We do not agree with the criticism that the Reforms were not given a fair trial. We do not see how the Reforms could have been worked in a better spirit at their inception if instead of the men who offered to take advantage of them, others who were frankly opposed had entered the Councils. Actually the very abstention of the latter was helpful, and we venture to think that if they had entered the Councils with the opinions they held at the time, the Reforms would have broken down at a very early stage. We do not wish to overlook the fact that the atmosphere which prevailed outside the Councils was one of hostility to the Government; but we do not think that such outside atmosphere prejudiced the working of the Reforms inside the Councils. At the last election the supporters of the Reforms were to a great extent defeated and the Swarajists entered the Councils in considerable numbers. The experience of the last 12 months of the work of the Councils, particularly in the Central Provinces and Bengal has brought out prominently the difficulties of working the present Constitution.

CHAPTER VI.

Defects of Dyarchy.

The complaints brought forward against the present system of government in the provinces may be enumerated as follows :—

(1) the impinging of the administration of reserved upon that of transferred subjects and *vice versa;*

(2) the absence of joint responsibility of the Ministers;

(3) the absence of joint deliberation between the two halves of the Government;

(4) the attitude of the permanent officials towards the Reforms, their relations with the Ministers and their general position in the new Constitution;

(5) the difficulties in the way of Ministers arising out of the overriding powers of the Governors under the Act;

(6) the control of the Government of India and the Secretary of State;

(7) (*a*) the measure of control exercised by the Finance Department;

(*b*) the fact that under the rules the Finance Department is in charge of a member of the Executive Council who is also in charge of the spending departments;

(*c*) the disqualification of the Ministers to hold the portfolio of finance by reason of the Devolution Rules.

We propose to deal with them *seriatim*. (1) Government being a single unit, experience shows that it is impossible to divide its functions into water-tight compartments. Indeed from a constitutional point of view a division of the functions of government is scarcely practicable. But the real difficulties of the division effected by dyarchy which, in the words of the Governor in Council of the United Provinces, is "a cumbrous, complex and confused system, having no logical basis" appear most clearly when the system is examined from an administrative point of view. In their despatch of 11th November 1918, the Government of Bombay observed as follows :—

The impinging of administration of reserved upon transferred subjects and *vice versa*.

> "A reference to the records of Government will show that there is scarcely a question of importance which comes up for discussion and settlement in any one of the Departments of Government which does not require

> to be weighed carefully in the light of considerations which form the province of another Department of Government. The primary duty of the Government as a whole is to preserve peace and order, to protect the weak against the strong, and to see that in the disposal of all questions coming before them the conflicting interests of the many different classes affected receive due attention. And it follows from this that practically all proposals of importance put forward by the Minister in charge of any of the departments suggested for transfer will involve a reference to the authorities in charge of the reserved departments. There are few, if any, subjects on which they (the functions of the portions of the Government) do not overlap. Consequently the theory that, in the case of a transferred subject in charge of a Minister, it will be possible to dispense with references to Departments of Government concerned with the control of reserved subjects is largely without foundation ".

We do not think that the anticipations of the Bombay Government were by any means extravagant and from the evidence before us we are satisfied that those anticipations have proved remarkably true in actual administration. In this connection we would refer to what Mr. Chintamani has said in his memorandum : "In the light of my experience I must endorse every word of the above passage. The observations of the Government of Bombay on the question of financial control leading up to the conclusion that Ministers alone cannot be responsible to the Legislature because of the very real control that the Finance Department must exercise over all the expenditure up to the time when it is made have been demonstrated to be not a whit less true " It is by no means difficult to conceive that the points of view of popular Ministers and the members of the Executive Council who owe no responsibility to the Legislature and at least half of whom are brought up in official traditions from the start of their career should not infrequently vary and lead to unsatisfactory results. We regard this feature as one of the inherent defects of dyarchy.

Joint Responsibility.

(2) The next defect which we desire to notice is one that was very much pressed on our attention during our investigation. It was pointed out to us by a majority of the *ex*-Ministers whom we examined that the Ministers were dealt with by their Governors individually and not collectively. In other words, the point raised was that there were Ministers but no Ministries. The evidence of Mr. Chitnavis and Rao Bahadur Kelkar of the Central Provinces, of Lala Harkishen-

Lal of the Punjab, and of Sir P. C. Mitter of Bengal shows that not only did the Governors act with their Ministers separately but the latter, in some provinces at any rate, themselves did not observe the convention of joint responsibility. On the other hand, the evidence of Mr. Chintamani shows that the late Ministers in the United Provinces prescribed for themselves a different course of conduct consistent with the true constitutional position. Dealing with the question of the relations of the Governor and the Ministers, Mr. Chintamani describes in detail the practice followed in the United Provinces at the commencement of the new era and the variations of that practice later on. The Governor in Council of the United Provinces, in his letter, dated 3rd July, 1924, however, takes the view that "even in England the joint responsibility of the Cabinet does not extend to all the acts of all the Ministers composing it; and in India, where the Ministers are not always drawn from a single well-organized party, the ties between them cannot be as close as they are in England. But it rests in the main with Ministers themselves to determine how far joint responsibility is to be carried. Pandit Jagat Narain, the late Minister for local self-Government carried it to the point of resigning over a question with which he had no concern, but to insist that the resignation of one Minister must always entail that of his colleague or colleagues might often, in the conditions at present obtaining, make it impossible to form a Ministry." We recognise that sometimes a Governor may find it difficult to form a homogeneous Ministry, but in our opinion there should be no insuperable difficulty for a Governor to appoint, from different groups, Ministers who would agree to work upon a footing of joint responsibility. On this question the Joint Select Committee in their second Report observed as follows:—"The Committee think it important that when the decision is left to the Ministerial portion of the Government the corporate responsibility of Ministers should not be obscured. They do not intend to imply that, in their opinion, in every case in which an order is passed in a transferred department the order should receive the approval of all the Ministers; such a procedure would obviously militate against the expeditious disposal of business and against the accepted canons of departmental responsibility. But in cases which are of sufficient importance to have called for discussion by the whole Government, they are clearly of opinion that the final decision should be that of one or the other portion of the Government as a whole."

United Provinces Government's views.

We shall now briefly review the opinions of some of the local Governments. The Governor in Council of the Central provinces in his letter, dated 7th July 1924, takes the view that at the present stage

Central Provinces Government's views.

of development of those provinces, the joint responsibility of the Ministers would mean the absolute rule of the majority party in the Council in the transferred departments. The Governor would prefer to let the convention come into being by a natural process of growth as the result of the development of party organisation. We shall deal with the question of party organisation hereafter.

Madras Ministers' views.

We may call attention to paragraph 22 of the letter of the Government of Madras, dated 28th July, 1924. The Madras Ministers also have in their minute adverted to this question. The Honourable the Raja of Panagal, in his minute, dated 16th July 1924, observes: "Each Minister has to deal with a Governor individually. There is no joint ministerial responsibility." The Honourable Sir A. P. Patro in his minute, dated 12th June 1924 observes: "The difficulty created by section 52 is to place the Ministers completely under the power of the Governor. There is no room for development of joint and corporate responsibility under the circumstances. The Act ought to provide for the independence of the Ministers and the Governor acting with the Ministers should decide any question by a majority."

Madras Government's view.

Dealing with these criticisms of the Ministers, the Governor in Council observes: "The provisions of sub-section 3 of Section 52 contain nothing inconsistent with the development desired; the Governor, it is there said, is to be guided by the advice of his Ministers, unless he sees sufficient cause to dissent from their opinion. It is rather the wording of the Instrument of Instructions and of various passages in the Devolution Rules which seem to contemplate that the Governor is to act with a Minister and not with his Ministers. In so far as these documents contain provisions practically inconsistent with or detracting from the conception of joint responsibility of Ministers, there may be a case for their modification. So far as this Presidency is concerned, the difficulty is more theoretical than practical. The Cabinet system to which reference has been made has tended to foster joint responsibility among Ministers involving, as it has done, the attempt to administer affairs as a joint Government. In other provinces, it is believed Ministers were not usually chosen as representing a particular party, and it is doubtful if they could be chosen now. Instead of altering the Act as the Ministers appear to contemplate, it would probably be sufficient to modify the Instrument of Instructions and the Devolution Rules, and to trust to the growth of a convention such as tends to be established in Madras.

Thus the difficulty has mainly arisen by reason of the wording of the Instrument of Instructions, but we desire to point out that party

system is already beginning to grow and we anticipate that with the march of events, it will become stronger and more defined at no distant date. But we think that it is undesirable that the growth of joint responsibility should be allowed to depend upon the personal equation of the Governor or the Ministers. In our opinion, the statute itself should be so amended as to secure the joint responsibility of the Ministers.

Amendment of the Act required.

We now pass to the third complaint which seems to us to be one of vital importance, having regard to the mixed character of the Executive Government. The Act itself makes no provision for joint deliberation between the two sections of the Government. The Joint Select Committee, however, laid considerable stress on the desirability of fostering a habit of joint deliberation in regard to a large category of business of the character which would naturally be the subject of Cabinet consultation. The Committee were distinctly of the opinion that joint deliberation between members of the Executive Council and the Ministers sitting under the chairmanship of the Governor should be carefully fostered. The Committee attached the highest importance to the principle that when once opinion has been freely exchanged and the last word had been said, there should be then no doubt whatever as to where the responsibility for the decision lay. Therefore, in the opinion of the Committee, after such consultation, when it was clear that the decision should lie within the jurisdiction of the one or the other half of the Government, that decision in respect of a reserved subject should be recorded separately by the Executive Council and in respect of a transferred subject by the Ministers, and all acts and proceedings of the Government should state in definite terms on whom the responsibility for the decision rested. The Committee visualised to themselves the Governor acting as an informal arbitrator between the two halves of the Government. They considered that it would be the duty of the Governor to see that a decision arrived at on one side of his Government was followed by such consequential action on the other side as might be necessary to make the policy effective and homogeneous. Lastly, they laid down that in the debates of the Legislative Council members of the Executive Council should act together and Ministers should act together, but should not oppose each other by speech or vote. Members of the Executive Council should not be required to support, either by speech or vote, proposals of Ministers of which they did not approve; they should be free to speak and vote for each other's proposals when they were in agreement with them. Mr. Montagu, in his speech of 5th June, 1919, on the motion for the second reading of

Joint deliberation.

Joint Select Committee's recommendation.

Mr. Montagu's view.

the Government of India Bill in Parliament, put the position more briefly as follows :—" If reserved subjects are to become transferred subjects one day, it is absolutely essential that during the transitional period, although there is no direct responsibility for them, there should be opportunities of influence and consultation. Therefore, although it seems necessary to separate the responsibility there ought to be every room that you can possibly have for consultation and joint deliberation on the same policy, and for acting together for the purposes of consultation and deliberation, as the bill provides, in one Government." We have taken the liberty of quoting these passages at length because the question of joint deliberations has attracted much public notice and some of the Governors in Council have also referred to it in their letters to the Government of India. Our attention has also been drawn by some witnesses to the varying practice in the provinces. In Bengal, we gather from the letter of the Governor in Council, dated the 21st July, 1924, that the two halves of the Government worked in unison and that the system of dyarchy was not literally adhered to.

Varying practice of the Local Governments.

The Governor in Council of the Central Provinces in his letter dated the 7th July 1924, stated that in his province every effort had been made to carry on the Government in the spirit of the recommendations of the Joint Select Committee. But to secure uniformity the Governor in Council considered it desirable to include in the rules of business made under section 49 (2) of the Act a rule requiring joint deliberation between both halves of the Government on all questions of important policy. From the letter of the United Provinces Government, we gather that since His Excellency the present Governor assumed office, there has in fact been joint deliberation on all matters in which both sides of the Government were concerned. Mr. Chintamani has in his memorandum given his impression of the joint working of the two halves of the Government. According to him, the practice was followed for the major part of the first year, but in the second year of his office joint meetings of the whole Government became less, and in the third, still less, frequent. The system had worked well, it would appear, just in the measure in which dyarchy was departed from, while misunderstandings, differences and friction became only too frequent after dyarchy came to be a fixed idea in the Governor's mind. In the beginning, according to him, " there were weekly meetings of the whole Government; such meetings gradually became less frequent until at times we had not more than one in the month, or even one in a couple of months or more." We also find from the evidence that at least on one occasion one member of the Executive Council spoke openly at a meeting of the Legislative

Council against the policy of the Ministers. We understand that in Bombay joint meetings were held from June 1921 onwards, but files of papers relating to business on the reserved side do not appear to have been, as a rule, circulated to the Ministers who were consequently unable to give any considered opinion on it. They therefore abstained, as we are informed by one of our colleagues, Dr. Paranjpye, from taking any prominent part in the discussion. In Madras, we gather from the letter of the Governor in Council that "joint consultation between the two parts of the Government has from the first been laid down as essential and has not been without the advantage of increasing the influence of Ministers in the councils of the Government and in extending that influence over the whole range of Government activities. It has also resulted, as the Ministers themselves would probably admit, in giving them the advantage of the steadying influence of the wider administrative experience enjoyed by their colleagues of the reserved half, and His Excellency the Governor in Council regards it as one of the most encouraging symptoms that Ministers have been ready to weigh well the advice thus given them, as well as that of the secretaries and head of departments under them." Dealing with this matter, Sir K. V. Reddi, an *ex*-Minister in Madras, says: "It must not, however, be forgotten that it was not the dyarchic system as conceived in the Act but an attempt to ignore it and get over its inherent difficulties that made it possible to achieve the little success which Madras is believed to have achieved."

Conclusions.

To sum up; the conclusions which we have arrived at on this point are (1) that the system of joint deliberation between the two halves of the Government in the spirit of the recommendations of the Joint Select Committee has been followed only in Madras and Bengal; (2) that in other provinces it has either not been followed at all or, if followed, it has not been followed consistently or to the extent and in the manner contemplated by the Joint Select Committee or laid down in the Instrument of Instructions; (3) that in some provinces at any rate Ministers have not been satisfied with the manner in which it has been followed. Much as we appreciate the wisdom of the recommendations of the Joint Select Committee and of the observations of Mr. Montagu, which we have quoted above, we feel that in the best of circumstances the habit of joint deliberation between the two halves of Government, good as it may be so far as it goes, cannot, without the element of common responsibility, lead to efficiency in the administration nor always to harmonious relationship between members of the Executive Council and the Ministers. Indeed it seems to us that at times it is apt to weaken the position of the Ministers *vis a vis* the Legislative Councils and the electorates in relation to reserved subjects, more particularly when there is occasion for difference of opinion in regard to

questions of policy between the Legislature and the Executive. We are anxious to safeguard ourselves against conveying the impression that given dyarchy to work, we do not appreciate the value of joint deliberation between the two halves of the Government, but we maintain that it is an inherent defect of the present Constitution that the Government should be divided into two halves.

Dyarchy an inherent defect in the constitution.

We turn, now, to the question of the relation between the reformed Government and the public services. Some of the Governors in Council have referred to it either in their reports of 1923 or in their letters of 1924. The question has been approached from various points of view. The Governor in Council in Madras in paragraph 27 of his letter of the 16th July, 1923, says that "it is undoubted fact that there has been and still is an appreciable amount of discontent and a considerable feeling of insecurity among these services, both as to the terms of their pay and pension and as to their general prospects. The feeling is partly due to the fact that in translating the spirit of the Reforms into practical action a considerable number of posts hitherto reserved or believed to be reserved have been thrown open recently and more are likely to be thrown open in the future to Indians, as has already been done, to take typical instances, in the Educational and Agricultural services, while others have been abolished or threatened with abolition. A second cause is uncertainty as to how the Constitution of India under the Reforms will develop in the future. A third arises out of the economic conditions which are a legacy of the War." We note, however, with satisfaction that in the next paragraph he says that "the relations between the Ministry and the heads of departments under their control have generally been cordial; and the local Legislative Council, though naturally sympathetic towards Indian aspirations, has not been unreasonable in its attitude towards the British services. Individual members of the services have undoubtedly found it difficult to serve under the altered conditions; but the great majority have accepted the change in a most loyal spirit and have done their best to make the Reforms a success."

The Public Services.

Views of Local Governments.

The report of the Governor in Council in Bihar and Orissa, dated the 14th August, 1923, after pointing out that though the present intermediary stage between bureaucratic supremacy and popular control creates difficulties, there has been no want of loyal co-operation on the part of the Ministers, observes that "members of the services feel that their tenure is extremely insecure and that any chance of securing suitable employment elsewhere is worth accepting." The Governor in Council in the United Provinces in his letter dated the 3rd July, 1924, makes

the following observation: "More than one resolution has been passed which, if carried out, would have deprived them of appointments to fill which they had been recruited. It is not suggested that the Legislative Council has deliberately sought to inflict injustice on European officers. The constitution of the all-India services is not well understood and many members of the Legislature are influenced by the feeling (for which there is justification) that in the past Indians have not received their fair share of the higher appointments. The natural effect, however, of the attitude of the Legislature has been to create in the minds of Englishmen serving in India an impression of hostility and a feeling of insecurity which makes it difficult for them to give of their best. There are distinct signs that the services are losing their former keenness. Since they no longer have the power of shaping policy to the extent to which they had, they no longer feel that the progress of the country depends upon their efforts, nor indeed that any efforts of theirs are likely to have abiding results. Enthusiasm and energy have also been sapped by financial pressure, and by the cloud of uncertainty which hangs over the future of the country to which they have given their lives."

In paragraph 10 of Annexure A to the letter of the Central Provinces Government, dated the 7th July, 1924, reference is made to the services' distrust of their own future, to the unfriendly attitude of the local Legislative Council in the beginning, and to the keen desire of the non-official members of the Council for the Indianisation of the services and the resentment of the fact that they are not subject to their control. "During the last year of its life, the feeling of the Legislative Council," so ends the paragraph, "became less unfriendly to the European services and the services had more confidence in the support of the Home Government and Parliament, with the result that the feeling of distrust became perhaps less pronounced." We have given these extracts with a view to show the nature of the complaints of the services and the view taken of their position in relation to the Reforms by the various Governors in Council. How far the present position will be affected by any decisions that may be taken on the recommendations of the Royal Commission on the Superior Civil Services presided over by Viscount Lee we do not feel called upon to discuss.

Anomalous position of the Services.

While it is possible to understand the feeling that the services have no longer the power of shaping policy to the extent that they had or their feeling that the progress of the country no longer depends upon their efforts, or that any efforts of theirs are not likely to have abiding results, it may as well be pointed out here that this is the inevitable consequence of the transference of power, limited as it is, to local Legislatures; and indeed it constituted the raison *d'être* of the Reforms. The Imperial services in the

past have been mainly responsible for the shaping of policy in India and the combination of political and administrative functions in the services is to our mind mainly responsible for the frequency and strength of the criticism to which they have been exposed in the past. The immunity which public services in England or the Dominions enjoy from hostile or unfriendly criticism cannot, we are afraid, be secured for the services in this country in any large measure unless, among other things, the relations of the services to the Legislatures are brought into closer approximation with those prevailing in England or the Dominions. When it is recognised by the public that the services are mere instruments for the execution of the policy of the Government and that they have no political functions to discharge, we think they will cease to be the targets of that criticism which is pointed out as an undesirable feature of the present political conditions in India; for when that stage is reached, it will be the responsible Ministers and not the services who will have to bear the brunt of public criticism. As matters stand at present, the control of the services or their recruitment does not rest with the local Governments or with the Government of India. It seems to us, therefore, that in the best of circumstances the present position is apt to give rise at times to friction and a feeling of mutual distrust which cannot be conducive to efficient and good administration.

Friction inevitable in present conditions.

In the course of the evidence that we have recorded, some allegations have been made suggesting or implying want of co-operation on the part of the services with the Ministers. We have carefully considered in this connection the evidence of the *ex*-Ministers who appeared before us. Some of them, such as Sir P. C. Mitter, referred emphatically to the support and loyal co-operation which they always received from the permanent officials. He, however, stated that his relations with some of the members of the Indian Educational Service were not happy. Mr. Kelkar's evidence does not warrant us in coming to the conclusion that there was any want of loyalty on the part of the officers attached to his departments, though there might have been some occasions on which he and the heads of departments and secretaries might have on matters of opinion come into conflict. Mr. Harkishen Lal's evidence too does not justify us in arriving at any decision adverse to the loyalty of the services. Mr. Chintamani's evidence shows that there were many officers whose attitude towards the Ministers was correct, and some were cordial and helpful. In his oral evidence he stated that the relations between him and his officers were quite good in the beginning, though not so good with some of them throughout. He however never questioned the honesty of those officers who differed from him. Sir Chimanlal Setalvad who was a member of the

Executive Council, Bombay, admitted that he received the greatest assistance from the services, though he pointed out that on certain occasions there was owing to their lack of control over the services embarrassment caused to the Ministers. Our own conclusion upon a review of the evidence is that generally speaking the attitude of members of the services was one of loyal co-operation, though in a few exceptional cases it might not have been so. At the same time, we are bound to point out that our analysis of the situation leads us to think that two important factors have operated to affect the relations of the Services to the Ministers. The first is the natural difference between the points of view of Members of the permanent Services and the Ministers in regard to questions of policy, inasmuch as they represent different schools of thought, one bureaucratic and the other popular. The second factor is that under the present Constitution the Ministers feel that the Services can look to higher powers for the enforcement of their views in cases of differences which tends to undermine the Ministers' authority.

Anomalous position of the services.

We venture to think that under the present system, the entire constitution, the methods of recruitment and control of the services are incompatible with the situation created by the Reforms and the possibility of their further developments. The present organisation of the services came into existence when admittedly the centre of political gravity was outside India and when the services took a leading part in the shaping of policy. Those conditions have appreciably changed and will change still further, and it is but natural that there should be dissatisfaction among the services with their position and also among the Legislatures with the restraints and limitations imposed on their powers in relation to the services. We think that the question of the services is inseparably connected with the question of constitutional development in India and we are of the opinion that the relation of the services to the Legislatures cannot be put on a satisfactory and enduring basis by a mere amendment of the rules or even by the delegation of certain powers under section 96B. We desire to repeat what we have already stated, that the position of the permanent services in India should be placed on the same basis as in England: we fully realise the imperative necessity of safeguarding the interests of the services. Whether this can be achieved by the passing of an Act by the Imperial Parliament or by the Indian Legislature or by the incorporation of special provisions for the protection of the rights and interests of the services in the future Constitution of India, are questions on which we recognize there may be differences of opinion. Whichever method is adopted, we are persuaded that the question calls for an effective and early solution.

We are aware of the provisions of the Government of India Act relating to the appointment of a Public Services Commission. We recognize the value of such Commissions in the Dominions, and while we think that the appointment of such a Commission in India should lead to the solution of many difficulties which have arisen in connection with the services, we feel that without a proper definition of the relations of the services to the Legislatures in the light of the new conditions introduced by the Reforms, it will not be easy to secure a smooth and harmonious working of the Constitution.

Public Services Commission.

While we accept the principle underlying the appointment of such a Commission, we desire to point out that the Commission contemplated by the statute is one owing its appointment to, and deriving its authority from, the Secretary of State in Council, and we cannot see how such a Commission can be appointed by any other authority so long as the section referred to above stands in the Act. We are, however, of the opinion that the statutory power of appointing such a Commission should be vested in the Governor General in Council, but this as pointed out above is obviously impossible without an amendment of the Act itself. Similarly, section 96B(2) gives the Secretary of State in Council power to make rules for regulating the classification of the Civil Services in India, the methods of their recruitment, their conditions of service, pay and allowances, discipline and conduct. It also provides for the delegation of the power of making rules to the Government of India or to the local Governments to such extent and in respect of such matters as may be prescribed and the authorisation of the Indian Legislature or the local Legislatures to make laws regulating the public services. To the best of our knowledge such delegation in respect of the services has not yet taken place. But we understand that it is proposed to provincialise such of the services as may be directly employed in the administration of the transferred subjects. Without expressing any opinion on the likely effects of the contemplated change we would point out the anomaly of placing the services or any portion of them under the protection or control of any other authority except the Government of India. We are aware of the strong feeling entertained on the subject by the services themselves. We recognise the great importance of keeping them well contented and beyond the reach of the fluctuations of political opinion or influence incidental to a system of democratic government. But we feel that their position can be secured and the causes of their discontent removed by proper legislation on the subject. We apprehend that proper relations between the Legislatures and the services cannot be established so long as the former feel that they have no power of dealing with them in respect of the matters

mentioned in section 96 B(2), and so long as the latter feel that they can look up to a higher authority outside India in respect of those matters. In our opinion, for the proper cultivation of a due sense of responsibility on either side the basis of their relation should be changed, and we would welcome any legislative enactment which secured the object referred to above. It is, however, obvious that our views cannot be given effect to by the exercise of any rule-making power.

The Finance Department.

As regards the general position of the Finance Department in the Provinces, we observe that it occupies a peculiar position in the dyarchical system of Government, and according to the written or oral evidence of several *ex*-Ministers, it has demonstrated the difficulties and defects of the system more than almost any other of its many anomalies and imperfections. In the first place, it has not in fact been a department common to the whole and independent of either half of the Government, but has been made a reserved department by the Devolution Rules (Rule 36). Ministers are ineligible for the office of Finance Member, who is the head of the Department. The Finance Member must be a member of the Executive Council. There is no force in the argument put forward in defence of this rule, that trained men are required to fill the office, for not all of the officers who have held or now hold it in the provinces had previous experience of the working of the Finance Department, while the Indian member of the Executive Council of Bihar and Orissa who is in charge of Finance has not proved to be less competent than the service members in the other provinces. But had he been an elected member of the Legislative Council and a Minister responsible to it, he would have been ineligible for the position. We think this bar should be removed even under the present system.

A Joint Secretary for Transferred Departments.

The provision of the appointment of a Joint Secretary to look after the transferred departments does not solve the difficulty of the earlier part of the rule from the point of view of the Ministers. If advantage had been taken of it by Ministers, it would only have produced, very likely, administrative difficulties and friction and we are not surprised, therefore, that in no single province has it been utilised.

Functions of the Finance Department.

It has been stated that the Finance Department can only give advice on the financial aspect of administrative proposals and can do no more and that Ministers are at liberty not to accept the

advice. This we fear must be regarded as an incomplete and a theoretical description of the position and in the light of what nearly all the Ministers and *ex*-Ministers whose opinions have been furnished to us have said, we cannot accept that description as being wholly in accord with actual facts. The evidence of the Ministers and officers of the Finance Department has made it clear that the Finance Department in examining proposals of the other departments not only considers the financial point of view but also considers the policy of the proposals and this procedure has been sought to be justified on the analogy of the Finance Departments in other countries whose control is said to be even more stringent than that exercised by Finance Departments in India. But the two cases are not on all fours, for in those countries the Government is unitary and the policy to be criticised is that accepted by the whole Government of which the Finance Department forms a part. But in the provinces under Dyarchy the policy of the Transferred Departments is the policy of the members who are responsible to the legislatures, and the examination of the policy of the Transferred Departments by the Finance Department is therefore open to grave objection.

As regards the liberty enjoyed by Ministers to reject the advice of the Finance Department, it must be pointed out that their only remedy then is to appeal to the Governor against the department. We fear that it is not correct to say that it is the department which has to lay such appeal. Where there is a divergence of opinion, all that remains for the Finance Department to do is not to release the needed funds, unless and until the Minister concerned has produced before it the sanction of superior authority, namely, the Governor.

Finance Member.

(7) One general complaint against the provision of a very serious character has been made that the Finance Member is also in charge of some spending departments and that naturally enough there is an unconscious desire on his part to promote the interests of those departments at the expense of other, and particularly of the nation building departments under the control of the Ministers [illegible] that in many provinces Ministers have felt that their departments have been starved. To this proneness of the Finance Department several of the *ex*-Ministers have referred in the course of their examination; but this suggestion has been repudiated by some of the Governors in Council. Our examination of the reports of some of the local Governments which give the figures shows that the division of

expenditure between the reserved and transferred halves has been as follows :—

	Reserved.	Transferred.
Madras—		
1921 . .	68 per cent.	32 per cent.
1922 . .	67 per cent.	33 per cent.
1923 . .	66 per cent.	34 per cent.
Bengal—		
1921 . .	70 per cent.	30 per cent.
1922 . .	66 per cent.	34 per cent.
1923 . .	66 per cent.	34 per cent.
Assam—		
1921 .	78 per cent.	22 per cent.
1922 .	74 per cent.	26 per cent.
1923 . .	75 per cent.	25 per cent.
Bihar and Orissa—		
1921 . .	30 per cent. recurring	70 per cent.
1922 . .	30 per cent. non-recurring	70 per cent.
1923 . .	26 per cent. recurring + non recurring	74 per cent.

It has been admitted by Sir Frederic Gauntlett that it is unsatisfactory that the Finance Member should have charge of any administrative departments. Assuming that what has been called "the costly remedy" of appointing a Member of Government to be exclusively in charge of finance is adopted, we are still doubtful that it will be a real and full remedy. It was, however, pointed out to us that it would not be, because the Finance Member would still continue to be part of the 'Governor in Council' charged with the responsibility for the administration of the reserved and with no direct responsibility for the transferred subjects. We are impressed by the validity of this objection.

Yet another suggestion was made in the course of the examination of one of the *ex*-Ministers who came before us. It was that the Finance Member should be neither a member of the Executive Council nor a Minister. What will he be then? Will he be a Member of the Government? Will he be only an adviser? To whom will he be responsible? We mean no discourtesy if we are unable to treat this particular suggestion as being at all feasible.

There still remains one last objection. Even if satisfactory arrangements can be made to meet the criticisms which have been rightly made of the present system, we have still to consider the position of the Governor. He is the supreme appellate authority in all matters of disagreement between his two sets of colleagues In regard to differences between the two halves of the Government arising over financial matters, his position must be extremely

delicate and embarrassing. He is ultimately responsible to Parliament through the Government of India and the Secretary of State for the administration of the reserved subjects, of which finance forms a part under the rules. Therefore the tribunal to which alone the Minister can appeal is far from being satisfactory. This is a prominent feature of the present Constitution and its defective nature has been stressed by more than one Minister and *ex*-Minister.

Separate purse.

It has been suggested that the evils of the present system can be remedied by the adoption of the system of a separate purse. We do not favour this, for it is calculated to aggravate the difficulties instead of mitigating them. The question was thoroughly examined by the Joint Select Committee and, in our opinion, rightly objected. The most careful and anxious deliberation that we have been able to bestow upon this part of the subject leads us to but one conclusion. The only cure to be had is in the replacement of the dyarchical by a unitary and responsible provincial Government.

CHAPTER VII.

PROVINCIAL AUTONOMY AND CENTRAL GOVERNMENT.

With the exception of Messrs. Fazlul Huq and Ghuznavi, ex-Ministers of Bengal, nearly every non-official witness whom we have examined has pressed on us the need for provincial autonomy and of introduction of responsibility in the Central Government. Although as we have stated above, our terms of reference do not permit us to enter into any detailed examination of any scheme of provincial autonomy or responsibility in the Central Government, yet bearing in mind the importance of the subject and the vagueness of ideas regarding these questions, we think it desirable to briefly describe the ideal which we think should be kept in view. We recognise that it is impossible to dispense with the Central Government. The Central Government will perhaps be the most potent unifying factor between province and province and we think that it will be charged with the vital responsibility of securing national safety. In the present state of things the Central Government exercises control over provincial Governments of a three-fold character, namely, financial, legislative and administrative. In any scheme of provincial autonomy it seems to us to be vitally necessary that the finances of the provinces must be separated from those of the Central Government. This will necessarily entail a determination of the sources of revenue to be assigned to each of the limitation of the field for taxation for each so as to avoid conflict between the two and of the prescription of the limits within which and the conditions subject to which provincial Governments may go into the market for the purposes of borrowing. This will also involve the overhauling of the entire machinery including the system of audit and account. In recent years there has been a movement in the Central Government for establishing its special agency for the collection of central revenues, such as income-tax. Such agencies may have to be multiplied, though we do not think that it is necessarily incompatible with the system of provincial autonomy that the Central Government should requisition and pay for the services of the provincial Governments for agency work. Nor do we think that the establishment of provincial autonomy necessarily involves the establishment of federal courts. We should not be supposed to favour the creation of such courts, as we think there is no constitutional bar to the provincial courts dealing with cases arising out of matters within the domain of the Central Government.

Financial autonomy.

As regards the legislative control, it is exercised at present in two ways. There is first the ultimate power of veto exercised by the Governor General. That power is from a constitutional point of view indispensable. But

Legislative autonomy.

it is well known that not only in fully responsible constitutions but also in a constitution like ours it is very sparingly exercised. There is next the power of previous sanction which is embodied in section 80A (3) of the Government of India Act. In our opinion, the list of subjects to which it applies at present will have to be carefully revised and the area of its application substantially circumscribed. We can conceive cases arising where a provincial legislature may undertake legislation affecting laws passed by the Central Legislature or affecting interests of an extra-provincial character. To cases of this description, we think, the doctrine of previous sanction may well be applied. We do not think the doctrine of previous sanction, subject to the limitation indicated above, is necessarily inconsistent with the ideal of provincial autonomy.

Residuary Power.

As stated already, we think that the spheres of action with regard to legislation should be carefully defined. This has been done in Canada and the Commonwealth of Australia, though the points of view adopted in the two Dominions are not the same. In the former the residuary power rests with the Federal Parliament; in the latter it rests with the States. We think that in the circumstances of India it is necessary that the residuary power should be vested in the Central Government.

As regards the administrative control of Local Governments exercised by the Central Government, it arises at present mainly (1) in respect of reserved [illegible] (2) the Imperial Services, and (3) inter-provincial matters. We do not wish to say much about the control in respect of the Imperial services as in our opinion the contemplated appointment of the Public Service Commission will materially affect the powers of both the Central and Local Governments, and it is difficult for us to be more precise until we have some experience of the working of that body. Nor is it necessary for us to dwell at any length on the control of the Central Government in regard to inter-provincial matters, for with a proper definition of such matters, it is obvious that the final arbitrator of disputes arising between one province and another must be the Central Government. Again, it is conceivable that at times disputes may arise between the Central Government itself and a Local Government. In such cases we should be content to leave the decision with the Central Government of the future as we conceive it to be, unless on an actual examination of a detailed scheme it is found necessary to call in aid the offices of a judicial tribunal, which method of settlement, we apprehend, has in Canada involved Governments in much litigation. The matter is, however, one on which we should not be understood to be necessarily committed to the Canadian model.

Administrative Control. Law and order.

Coming now to the control of the Central Government over provincial matters which are at present reserved, the most important of them is 'law and order.' The maintenance of law and order, we recognise, sometimes makes it necessary for the civil power to invoke the aid of the military and it may be urged, as indeed it has been, that it may put too much strain on the Governor General to place the services of the military at the disposal of Ministers whose policy may lead to such necessity. Such an argument if pressed to its logical conclusion would imply a failure of primary duty on the part of the Governor General and a negation of co-operation between the Central and Local Governments involving the sacrifice of public safety and the security of the State—all the more to be regretted when it is borne in mind that India has always paid for its defence. We think that should the Minister be found ultimately to be responsible for such a situation, there would be many constitutional ways of dealing with him. In the event, therefore, of provincial autonomy being established, we think that, while the power of legislating general penal laws such as the Indian Penal Code should remain with the Central Government, the actual administration of these laws would be in the hands of the Local Governments who would ordinarily be responsible for the maintenance of law and order.

Constitution of the Central Government.

Intimately connected with the idea of Provincial autonomy is the constitution of the Central Government. The present constitution of that Government presents certain features which, in our opinion, cannot be compatible with autonomous local Governments. In the first place, the Central Government is by statute subject to the control, superintendence and direction of the Secretary of State who in his turn is responsible to Parliament. In the next place the Executive in the Central Government is irremoveable and consists partly of members drawn from the Services and partly supposed to be chosen from the ranks of public men, who are not united together by those ties of political association which characterise a responsible ministry. In the third place, in their relations to the Legislature they present certain anomalies, and the entire position is one unparalleled in any other constitution within the British Empire. The Executive are in a minority but real political power and authority rests with them. The Legislature consists of an overwhelmingly large elected majority with no doubt the power to influence the Executive Government but with no power to enforce its decisions. We do not overlook the fact that, subject to some serious limitations, the Legislature has got the power to reject the Budget, or to be precise, that portion of it which is subject to its vote. When such a contingency arises, as it did actually arise recently, the Governor

General can overcome the dead-lock by resorting to his power of certification. However logical or necessary such power may be having regard to the policy of the present constitution, it is clear that it must bring the Legislature and the Executive into serious conflict, and demonstrate that the Legislature has no real control or responsibility, and that its will is in the ultimate resort subordinated to the Governor General. Further, with Provincial Governments fully responsible to their Legislative Councils and the Central Governments irresponsible in the last resort, the control of various kinds which is desired to be continued in the Central Government will be more difficult to enforce and the centrifugal tendency observed in many Federal States and especially marked in the history of India will manifest itself more and more making a stable Government unworkable. We believe that it is mainly because of these and similar other considerations that the bulk of Indian evidence has suggested that the portion of the Central Executive dealing with civil administration should be simultaneously made responsible to the Legislature. Certain important reservations have been made by Indian Ministers, *ex*-Ministers and other non-official witnesses. They have suggested that until India is able to take over the control of her means of self-defence, the control of the army should remain with the Governor General who *qua* that subject will not be responsible to the Legislature, and that the statute itself should provide a charge on the revenues for the budget of the army (which is now not votable) to be settled for a term of years probably in consultation with experts, and that any further demand in excess of such Budget should be put to the vote of the Assembly. We understand them also to suggest that in the event of a peril to national safety the Governor General may authorise any expenditure over and above the one provided by the Statute or that refused by the Legislature. They would, however, leave the Assembly to influence the military policy and administration by resolutions moved in the House. Similarly in regard to Foreign and Political Department, we understand their position to be that they should at present remain in the hands of the Governor General which, we understand, is the existing practice, and that their Budget should also be similarly provided for. It should not be difficult to secure the representation of the Governor General in the Legislature in respect of these subjects. We do not understand these suggestions at all to mean or imply the introduction of dyarchy, for its essential features will not be found in such a system. We ourselves are generally in agreement with these views which, in our opinion, are by no means incompatible with the conception of responsible Government. It is worth noting that Lord Durham's conception of responsible Government did not include the management by the Colonial authorities of the question of military defence (Egerton's Federations and Unions in the British Empire, page 23), but as

already stated, we feel ourselves precluded from examining them in detail, and it is obvious that these views cannot be given effect to without a radical alteration of the constitution. At the same time we feel that these matters are of such great importance affecting the whole future of India and its Government that they should be carefully and thoroughly sifted and examined.

CHAPTER VIII.

Conditions of Political Advance.

In the course of our enquiry and discussions, we have had to give our consideration to certain important conditions of advance. They are connected with (*a*) the position of the electorates with reference to their education and capacity; (*b*) communal tension and tendencies; (*c*) the representation of the depressed and working classes; (*d*) the size and heterogeneity of the provinces; and (*e*) internal security and self-defence. We propose now to deal with these conditions *seriatim*.

(*a*) *Electorates and the public.*—Our attention was frequently drawn to the extent of interest displayed by the public, and particularly by the electorates, in the elections to, and subsequently in the activities of, the Legislatures. The number of voters who went to the polls in 1920 was a small percentage of the total, mainly owing to the political atmosphere which prevailed at the time, and ranged from 16.5 per cent. in Assam to 41 per cent. in the rural constituencies of Bihar and Orissa. Those who then preached a boycott of the Councils continued their hostility to the Reforms, and belittled, while the movement lasted, the efforts and achievements of the representatives of the people. In consequence, the task of political training, which is one of the chief obligations of members of the Legislatures, was a somewhat onerous one, and it must be confessed that in this respect the record of the members has on the whole been inadequate, though not so meagre as several local Governments seem to think. Some of them have referred in their reports to the indifference and apathy of the outside public towards the proceedings of the Legislatures. The Madras Government say that considerable interest and appreciation has been displayed by the public from the commencement of the Reforms, and that the constituencies have been keenly alive. In the Punjab public interest in the proceedings of the Council rose and fell, it is said, with debates with a pronounced political flavour; in the Central Provinces, the Government record a steadily rising tide of popular appreciation of the efforts of their representatives in the local Legislature. The discussion of agrarian questions in the United Provinces and the Bihar and Orissa Legislative Councils has brought home to large numbers of voters the value of the franchise.

Sir Malcolm Hailey on the Punjab Electorates.

We may here refer to some pertinent remarks of H. E. Sir Malcolm Hailey in opening the Punjab Legislative Council in November 1924. "The extension of the electoral system has brought into the orbit of politics classes whose interests were previously unvoiced and the free discussion here of their needs and requirements has given a new aspect to the whole of the public

life in the Punjab. The value of this development must not be judged merely by the force of the impact on Government policy of the views of these classes. The awakening of political consciousness among our rural classes has given them a new outlook as there is an insistent demand among them for better education, and for vocational training, great activity in availing themselves of character-building institutions such as co-operation, a new and more intelligent interest in all that concerns their economic welfare ". During the elections of 1923, the participation of the Swaraj party rendered the contests in many of the constituencies very keen and the polling was consequently much heavier than in the first elections. Even so, we are aware that the number of those who actually utilised their vote is a small proportion to the total population. Nor do we wish to overlook the fact that only six millions representing between two and three per cent. of the total population has been enfranchised. But it may not be amiss to point out here that in England, at the time of the first Reform Bill in 1832, only 3 per cent. were enfranchised, and these belonged to the rich and privileged classes; between 1832 and 1867, the number increased to 4·5 per cent., in 1867 to 9 per cent., in 1884 to a little over 18 per cent.; and it is only in 1918 that the number rose to over 50 per cent. (See Dr. W. A. Chapple's " Function of Liberalism ", Contemporary Review, September 1924). We would in this connection also draw attention to some impressive facts relating to the position in the United Kingdom as regards the state of the electorates and cognate matters, which Mr. Chintamani has cited in an addendum to his memorandum :

" Previous to 1832 there were less than 5,00,000 persons who had the right to vote in the election of members of Parliament. The Reform Act of that year increased the number to nearly 10,00,000; the Act of 1867 increased it to 25,00,000; the Act of 1884 increased it again to 55,00,000; and last of all the Act of 1918 increased the number of the electors to over 200,00,000. There are several millions of women to whom the vote is still denied " (" Principles of Liberalism ", 1924, Liberal Publication Department Booklets, No. 2).

" Most of the English boroughs may be roughly divided into those which were sold by their patrons, the great territorial magnates, and those which sold themselves to the highest bidder ". The country constituencies of forty shilling freeholders, although limited and unequal, were less corrupt and more independent than the voters in boroughs, but they were practically at the disposal of the great nobles and local landowners. In 1793, when the members of the House of Commons numbered 558, no fewer than 354 were nominally returned by less than 15,000 electors, but, in reality, on the nomination of the Government and 197 private

patrons. The Union with Ireland in 1801 added 100 members to the House, of whom 71 were nominated by 56 individuals. In 1816, of 658 members of the House, 487 were returned by the nomination of the Government and 267 private patrons. Of these patrons, 144 were peers. "The glaring defects of the representative system—the decayed and rotton boroughs, the private property of noblemen, the close corporations openly selling the seats at their disposal to members who, in turn sold their own parliamentary votes, and the existence of great manufacturing cities distinguished by their wealth, industry and intelligence, and, yet possessing no right of sending representatives to Parliament" (Taswell-Langmead's Constitutional History of England).

Small as is the proportion of the population of which the Legislatures are directly representative, some of the local Governments have admitted their representative character. Thus, the Madras Government say that "the Council represents public opinion and to a certain extent also creates it"; the Bombay Government makes the same admission "in the sense that all the chief communities are represented in it and the members understand the interests of their communities and are ready to defend and support them"; the Punjab Government remark that the Council was representative of various shades of opinion but moderate public opinion was predominant. "As a body", they add, "the Council was shrewd, cautious and strongly imbued with the conservative ideas traditionally associated with the farmer class".

We have not been able to find the exact number of illiterates among the present electorates. But notwithstanding the fact that education in the three R's among the masses has been neglected in the past, we think that the average Indian voter, both rural and urban, is possessed of sufficient intelligence to understand issues directly affecting his local interests and capable of exercising a proper choice of his representatives. We think that the repeated use of the franchise will in itself be an education of potent value and the process of education must go hand in hand with the exercise of political power. We are, therefore, of the opinion that the franchise in every province should be carefully examined, and wherever it admits of lowering, it should be lowered, so as to secure the enfranchisement of a substantially large number of people.

(*b*) *Communal Tension and Tendencies.*—We are fully aware that the unfortunate tension between the two principal communities Hindu and Muhammedan which has recently manifested itself in riots in some towns is held to be a serious warning against any precipitate or even early move towards responsible Government. We do not wish to overlook the argument or to underestimate its force, but we wish also to enter a caveat against the tendency to exaggerate the extent of these communal differences,

which has been visible in a marked degree in certain quarters. Much as we deplore these dissensions and disturbances, we shall point out that in judging of them and their bearing upon the question of political advance, regard must be had to the size of the country and its enormous population, and also to the fact that the vast majority of the people live peaceful life, and in rural areas the relations between the two communities are, generally speaking, friendly. It is mainly in towns that unfriendly relations sometimes lead to results which the saner section of each community deplore. We shall here quote the evidence of Mr. Barkat Ali, a representative of the Punjab Muslim League, which bears out our own views of the matter.

"*Q.* I want to put you a few questions about the Hindu-Muhammedan situation in the Punjab. The majority of the population in the Punjab are agriculturists. Are they not? *A.* Undoubtedly.

Q. About 90 per cent of the population in the Punjab live on agriculture directly or indirectly? *A.* Yes.

Q. Now, is there any Hindu-Muhammedan racial bitterness or feeling in rural areas? *A.* Nothing of the kind.

Q. Because the interests of the Hindu and Muhammedan population in the agricultural portion of the Punjab are common? *A.* Yes, identical.

Q. They have common interests? *A.* Yes.

Q. Now I come to the urban areas. You know that in the Punjab the number of towns exceeding 20,000 in population is very small? *A.* Yes, there are only a few large towns in the Punjab.

Q. In fact, the majority of municipal towns in the Punjab are really large villages? *A.* Quite.

Q. In the smaller towns, is there any bitterness of feelings between the Hindus and the Muhammedans? *A.* Not much.

Q. So that this acute phase of communal feeling which is talked of so much exists mainly in the bigger towns in the Punjab? *A.* In the larger towns of the Punjab.

Q. Like Multan, Lahore and Amritsar? *A.* You may add to these Rawalpindi also."

Recognising as we do the imperative necessity and urgency for the removal of these differences, we shall point out that the leading members of the two communities have been anxious to bring about the establishment of good relations and we hope that these efforts will bear fruit. We also recognise that the conditions precedent for the success of such efforts are (1) the frank recognition by each community of the principles of religious freedom and the cultivation of habits of toleration; (2) the effective safeguarding

of the interests of minorities in respect of their political representation; (3) the adequate representation of duly qualified members of each community in the public services of the country. So far as the latter two conditions are concerned, we think that they can be brought about by provisions in the Act itself or the rules thereunder and through the agency of the Public Services Commission. So far as the first condition is concerned, we think that the fulfilment of the other two conditions is bound to have its effect on the general outlook of the minorities concerned, and will materially help the leaders of the communities in their social and moral activities in the cause of friendliness. It will also, we think, give a totally wrong impression of the political attitude of the Muhammedan community to say that being afraid of political power passing into the hands of the Hindu majority they are as a community opposed to responsible Government. The resolution of the Muslim League which we quote below shows in our opinion that the Muhammedans are as keen as the Hindus on the issue of political advance, but that they are anxious that such advance should be accompanied by the protection of their interests.

Muslim League's Resolution.

"Whereas the speedy attainment of Swaraj is one of the declared objects of the All-India Muslim League, and whereas it is now generally felt that the conception of Swaraj should be translated into the realm of concrete politics and become a factor in the daily life of the Indian people, the All-India Muslim League hereby resolves, that in any scheme of a Constitution for India, that may ultimately be agreed upon and accepted by the people, the following shall constitute its basic and fundamental principles :—

(*a*) The existing provinces of India shall all be united under a common Government on a federal basis so that each province shall have full and complete provincial autonomy, the functions of the Central Government being confined to such matters only as are of general and common concern.

(*b*) Any territorial redistribution that might at any time become necessary, shall not in any way affect the Muslim majority of population in the Punjab, Bengal and North-West Frontier Province.

(*c*) Full religious liberty, that is, liberty of belief, worship, observances, propaganda, association and education shall be guaranteed to all communities.

(*d*) The idea of joint electorates with a specified number of seats being unacceptable to Indian Muslims, on the ground of its being a fruitful source of discord and disunion and also as being wholly inadequate to achieve the object of effective representation of various communal groups, the representation of the latter shall

continue to be by means of separate electorates as at present, provided that it shall be open to any community at any time to abandon its separate electorates in favour of joint electorates.

(*e*) No Bill or Resolution or any part thereof affecting any community, which question is to be determined by the members of that community in the elected body concerned, shall be passed in any Legislature or in any other elected body, if three-fourths of the members of that community in that particular body oppose such Bill or Resolution or part thereof.

That in the opinion of the All-India Muslim League the Reforms granted by the Government of India Act, 1919, are wholly unsatisfactory and altogether inadequate to meet the requirements of the country and that the virtual absence of any responsibility of the Executive to the elected representatives of the people in the Legislature has really rendered them futile and unworkable; the League therefore urges that immediate steps be taken to establish Swaraj, that is full responsible Government having regard to the provisions of the previous resolution and this, in the opinion of the League, can only be done by a complete overhauling of the Government of India Act, 1919, and not merely by an inquiry with a view to discover defects in the working of the Act and to rectify imperfections under its rule-making power."

We are of the opinion that notwithstanding the note of warning sounded by some Muhammedan representatives from Bengal, the correct interpretation of their attitude is that if the conditions mentioned above are fulfilled and no majority is reduced to a minority in any province, they will agree to political advance. Our attention has also been drawn to the attitude of other minorities but we shall observe that so far as the Sikh community in the Punjab is concerned, it will decidedly welcome political advance, while the Indian Christian community has not only publicly supported it but generally deprecated separate representation. As regards the Non-Brahmins in Madras, we shall content ourselves with saying that they are not a minority and whatever may be said of their attitude towards the Brahmins, it cannot be said that on communal or on any other grounds they are opposed to political advance. On the contrary, having secured a large majority in the Council in Madras since the new era has been inaugurated, the present Ministers in Madras distinctly favour advance. While, therefore, we think that in the present conditions it is unavoidable that due regard must be paid to communal interests and that they should be adequately safeguarded by provisions in the Constitution, we do affirm that by the mere postponement of the solution of questions connected with Constitutional advance not only will no useful purpose be served but that it may make the task more difficult in the future.

(*c*) *Representation of Depressed and Working classes.* As regards the representation of the depressed and working classes, we are of the opinion that the correct principle to follow would be to lower the franchise so as to give them a chance, through the open door of election in general electorates; but where practical considerations point to a different conclusion, we would suggest that for the next few years only special constituencies might be formed for them. Our colleague Dr. Paranjpye is of the opinion that it should not at all be difficult to secure their representation in the Bombay Presidency by election from three or four districts. Similarly as regards factory labour, we favour their representation by election. We think that though disorganized at present, labour is showing distinct signs in urban areas of organizing itself at no distant date. We anticipate that this process will be expedited by labour legislation which we understand is under contemplation of the Government of India.

(*d*) *Size and heterogeneity of the provinces.* We are aware that one of the objections raised in certain quarters to any further political advance is that some of the Governors' provinces are too big in size and population and heterogeneous in character to admit of the proper working of self-governing institutions. The subject is too vast and complicated to be discussed with the materials before us. But we are of the opinion that the consideration of the general redistribution of territories should not precede any constitutional advance, and in any case redistribution should not be effected without the consent of the populations concerned. We are, however, strongly opposed to the use of section 60 for the appointment of Deputy Governors.

(*e*) *Internal Security and Self-Defence.* Another vital condition of political advance is that whatever be the form of government it should be in a position to discharge in an effective manner its primary function of maintaining internal security and defending the borders of the country against foreign aggression. This function is at present discharged directly by the provincial Governments so far as internal security is concerned though in cases of emergency they have to depend upon the support of the military. As regards defence against foreign aggression the responsibility rests with the Central Government. In our Chapter relating to provincial autonomy we have tried to envisage the future constitutional position in regard to matters of defence. We recognise the difficulty and complexity of the problem, but we also feel that there is urgent and pressing need for taking active steps to prepare India for her defence so that she may take over ultimately the management of her resources

of defence. We are aware of the steps which in recent years have been taken towards the realisation of that ideal. We refer to the grant of King's Commission to a small number of Indians, the opening of a Military College at Dehra Dun, to the pending proposals for the development of Territorial and Auxiliary Forces and the Indianisation of eight Units. We recognise that these matters are closely connected with the question of India's political advance and we feel that there can be no stability about any Constitution which may be devised for India without at the same time taking steps to prepare her for her self-defence within a reasonable period of time. In order to satisfy this condition of political advance we think that it is necessary to prepare a scheme which will have a direct relation to constitutional development in the near future to enable India to achieve full dominion status. We naturally do not feel ourselves called upon to enter into the details of any proposals. We have ventured to express these views only because it appears to us that this vital condition of political advance must be stated and recognised.

CHAPTER IX.

POSSIBILITY OF ADVANCE BY RULES.

It has been urged that an advance can be made by action under section 19A of the Act and without any radical amendment of the Act itself. With all respect to those who maintain this view, we entirely differ from it. In the first place, it is obvious that under section 19A the Secretary of State can only "regulate and restrict" the exercise of the powers of superintendence, direction and control vested in him. In the second place, such regulation and restriction of powers must be with a view to give effect to the purposes of the Government of India Act. These purposes are defined in the preamble, and we think that even if the Secretary of State felt so disposed, he could not, by the mere exercise of his powers under this section, abolish dyarchy. In the third place, reading the second and third parts of section 19A with the first part, it seems to us that the relaxation of the control contemplated by section 19A can only be with regard to Provincial Governments and cannot have any relation to the Central Government. The words "subjects other than transferred subjects" in the second part of the section, and the words "any rules relating to transferred subjects" in the third part of the section seem clearly to indicate the limits of the relaxation of the control of the Secretary of State contemplated by the rule-making power under this section. We also think that the relaxation of control provided for by this section cannot mean the same thing as divestment.

Sir Malcolm Hailey's view.

Our view as to the interpretation and process of making rules under section 19A is in the main supported by Sir Malcolm Hailey's exposition of the law in his speech in the Legislative Assembly on the 18th July 1923. He said: "There are two processes by which advance can be achieved in the direction of waiving control. First of all, there is the process of convention; secondly, there is the process which can be achieved by the making of rules under 19A and the like. But mark the constitutional implications of these two processes. While under a convention of non-interference the statutory control of the Secretary of State and therefore of Parliament, still remains (though it may be in abeyance) the effect of making rules under section 19A differs in this, that it is a statutory divestment of control. What is the theory of our Constitution, or indeed of any Constitution? The theory of every Constitution which is not explicitly autocratic is that the Executive must remain under the control of some Legislature. Now, whatever some of our critics may say about us and the character of our administration, however autocratic it may be in intention and in spirit, in point of constitutional form it has not that character, for

the reason that our Executive is under the control of the British Parliament. In other words, it is under the control of a Legislature. Under what circumstances then can Parliament divest itself of that control? Obviously only in circumstances under which the Executive would come under the control of some other Legislature. Therefore, if Parliament is to be asked to divest itself of control over any particular subject, it seems to me that it can only do so when we have responsible Government within the Central Government, that is, when certain subjects are transferred to the control of the Indian Legislature. We would then have a process exactly parallel to that which has been followed in provincial Governments. There you have certain subjects transferred, that is, they are under the control of the [illegible] in so far that their administration is in the hands of Ministers who are responsible to the Legislature. It was in recognition of this fact that Parliament was able to divest itself of control over those particular subjects".

United Provinces Government's views.

Our view is further fortified by the opinion of the Governor in Council of the United Provinces contained in his letter, dated 3rd July 1924. We attach considerable importance to this exposition of the legal position, because that local Government happens to be presided over by Sir William Marris who was very intimately associated with the Reforms at their inception. "The Government of India have, indeed, suggested as another possibility, action under section 19A. The Governor in Council presumes that the suggestion is that the Secretary of State should by rules under that section divest himself of his powers of superintendence, direction and control over reserved subjects in respect of all matters on which the Governor in Council and the Legislative Council are in agreement, and that by an amendment of the Act (since section 45A (3) relates only to transferred subjects) the Government of India should similarly divest themselves of the powers of control now exercised by them. The Governor in Council cannot too strongly emphasise his opposition to this course. He believes that divestment (which, of course, must be clearly distinguished from delegation) would be constitutionally unsound, and indeed that the full implications of section 19A in so far as it enables this step to be taken, were possibly not foreseen or intended. At all events a similar proposal put forward by the Crewe Committee with regard to Central subjects was rejected by the Joint Parliamentary Committee for reasons which are as conclusive to-day as they were four years ago. Every Government, which is not a military autocracy, must be responsible to some authority, whether that authority be the people as a whole or some dominant class or section. The Governor in Council is responsible at present to

Parliament and the control of Parliament is enforced by the Secretary of State, and the Government of India, who are the agents of Parliament. As already shown, the influence of the Legislature on the administration of the reserved subjects is very substantial; but influence, however far it may extend, is not control; control rests ultimately with Parliament; and the Governor is armed with powers which enable him, in the last resort, to give effect to its wishes. In so far as the Secretary of State and the Government of India were divested of the authority now exercised by them, this would cease to be the position; and to that extent the Governor in Council would no longer be responsible to Parliament. Legally, the place in the Constitution thus vacated by Parliament would remain unfilled; in deciding to accept the views of the Legislature, the Governor in Council would be responsible only to his own conscience. In practice, however, his authority would be completely undermined; for to the wishes of the Legislature he could oppose only his own personal opinions. A situation of this kind could have only one outcome; the control now wielded by Parliament would pass to the local Legislature. But this control would have no legal sanction; and the Council would have no clearly defined responsibility. It may or may not be desirable that wider powers should be conferred on the Legislative Council, but this particular method has all the disadvantages and none of the advantages of a formal transfer".

We also desire to draw attention to section 131 of the Government of India Act which provides that nothing in this Act shall derogate from any powers of the Secretary of State in Council in relation to the Government of India. In our opinion, so long as this section stands on the Statute Book the control of the Secretary of State must constitutionally remain unimpaired, and it is difficult to see how any action taken by him under section 19A can divest him of that ultimate control.

CHAPTER X.

TRANSFER OF MORE SUBJECTS AND AMENDMENT OF THE ACT AND RULES.

In the preceding Chapters of our report we have made it clear that the result of our enquiry satisfies us that the Constitution must be amended. But we feel ourselves compelled by clause 2 of the terms of reference "to investigate the feasibility and desirability of seeking remedies for such difficulties or defects, consistent with the structure, policy and purpose of the Act (*a*) by action taken under the Act and the rules, or (*b*) by such amendments of the Act as may appear necessary to rectify any administrative imperfections." We accordingly proceed now to this part of our duty.

Transfer of more Subjects.

Our investigation in pursuance of this clause of the terms of reference has disclosed two possible courses; namely, (1) the transfer of more subjects from the list of reserved subjects to that of transferred subjects and (2) the minor amendments of the Act or the rules.

As regards the first course, it is clear that for the continuance of the system of Dyarchy at least one subject should continue to be reserved. The majority of the Committee, in their Report, suggest a transfer only of the following subjects :—

(1) ' Forests ' in all the provinces in which they have not already been transferred;

(2) Excise in Assam;

(3) Fisheries in Assam;

(4) In regard to Education, they recommend that the first head in clause (*b*) of Schedule I, Part II of the Devolution Rules, namely, the control of the establishment and the regulation of the Constitution and Functions of Universities constituted after the commencement of these rules should now be deleted, the effect of which would be that legislation in this matter would become provincial.

(5) As regards Land Acquisition, they are of the opinion that there is no *prima facie* reason why this subject should not be transferred, and in their opinion it should be transferred in all provinces unless valid reasons are shown to the contrary.

(6) In regard to Provincial Law Reports, which we should have thought was a matter of no special administrative consequence, some members of the majority were not prepared to recommend transfer. But the rest of them, constituting a majority, recommended that the subject be transferred.

(7) As regards industrial matters, they recommend by a majority that Boilers, Gas and Housing should be transferred, those of them that are subject at present to the Indian Legislature continuing to be so.

(8) As regards Stores and Stationery, it is already a transferred subject, but the majority have recommended that the restriction of such rules as may be prescribed by the Secretary of State in Council should be done away with.

(9) As regards the Provincial Government Presses the majority of the Committee recommend that the question whether the subject cannot be transferred should be examined.

(10) As regards the control of the Services, to which we attach great importance, the majority consider it would be a waste of time to consider it until the orders on the recommendations of the Lee Commission have been passed.

It would thus appear that the only major subject recommended for transfer is Forests. One of our colleagues, Mr. Jinnah, took up the position in the Committee that our inquiry had shown that the entire constitution must be amended; but compelled as he felt under the terms of reference to confining himself to the limits prescribed by them, he proposed on the assumption that the principle of Dyarchy must be maintained, that all subjects save and except law and order should be transferred, subject to such adjustment and further definition of Central and Provincial Subjects as might be determined. With this opinion Dr. Paranjpye was in full agreement. Sir Sivaswamy Aiyer agreed with Mr. Jinnah's proposal, but he was not prepared to endorse the suggestion for the adjustment and definition of Central and Provincial Subjects without further examination of details. Sir Tej Bahadur Sapru did not object to the transfer of any subject, but consistently with the views that he holds on the practical difficulties of working Dyarchy, he was not prepared to recommend the transfer of any subject. The majority of the Committee say in their Report that no recommendations within the terms of reference would satisfy Indian public opinion. We desire to

express our complete agreement with this opinion, though we do not agree with some of the members of the majority who hold that there is a section of Indian politicians which will recognise that a constitutional advance has been effected if more subjects are transferred, particularly when the list of recommended transfers referred to above is borne in mind. We think that the position has been correctly summed up in the letters of the Governments of the United Provinces and Bihar and Orissa. The former observe as follows.

United Provinces Government's views.

"The transfer of all these subjects would not satisfy any section of Indian politicians. On this point the repeated declarations of prominent Liberals leaves no room for doubt. The opposition to the present Constitution would be in no way weakened; on the contrary, it would be strengthened in the measure of success achieved; while the capacity of the Government to resist further concessions would be correspondingly diminished."

Bihar and Orissa Government's views.

The Bihar and Orissa Government observe :—

"Whatever defects exist are inherent in the system itself; and this raises the main point which is the keynote of the discussion. Assuming that a further step in advance is contemplated, on what grounds is this step going to be taken? In order to make Dyarchy more workable? It is workable now, though creakily. The few minor remedies suggested above may cure a creak or two, but they will affect the larger questions in no degree whatsoever. The real issue is: Are we going to pacify at all costs our clamant critics? If this is the object to be sought, not one of the few minor remedies suggested above will influence them one jot or title. They will be satisfied with nothing but the disappearance of Dyarchy and in its place the substitution of what is popularly known as Provincial autonomy. That, as already emphasised, is the real issue which has to be faced."

We shall now briefly refer to the question of amendments of the Act or of the rules. There are certain recommendations made by the majority of our colleagues to some of which we have no objection; but there are others which we are not prepared to accept.

Amendment of the Act and the Rules.

(1) *Section 52.*—Ordinarily the salary of a Minister should be the same as that of a Member of the Executive Council, but the Legislature should have the power on grounds of economy alone to fix it by its own legislation at a lower figure which should bear a definite and reasonable proportion to the salary of a Member of the Executive Council. Reduction of the salary to mark the Council's disapprobation of a Minister's policy may be moved by a resolution at the time of the Budget discussion to the extent of a nominal figure only.

(2) Rules made under the proviso of sub-section (3) of section 52 suggesting that the word ' may ' should be changed to ' shall ', we have no objection.

(3) *Section 67B.*—It seems to us that the words " or interests " are far too wide and the fact that the Governor General certifies a Bill cannot be put higher than this, that in his opinion resort to this power is necessary. This power of the Governor General does substantially subordinate the Legislature to the Executive. In a fully responsible form of Government such power would be wholly out of question. In a constitution such as ours, it can best be in the nature of an expedient to be resorted to in coping with temporary difficulties arising out of a conflict between the Legislature and the Executive. But even so, we think that this power requires to be circumscribed more precisely and that, if the power of certification has to remain, its exercise must be strictly limited to cases of safety and tranquillity and the words " or interests " should be deleted from the section. It is suggested that the deletion of these words will give rise to the same difficulties as were at one time experienced in the Colonies. We are unable to agree with this opinion. Our attention has not been drawn to any difficulties that arose in the Colonies owing to the absence of these words from their Constitutions.

(4) (*a*) *Franchise.*—We have already dealt with this subject in a previous chapter. Holding the views that we do, we cannot agree with the majority that there should be no general broadening of the franchise.

(*b*) We are also of the opinion that adequate representation of the depressed classes and of factory labour should be given by means of election. One of our colleagues, Dr. Paranjpye, is strongly of the opinion that in the Bombay Council at least six elective seats should be allotted to the depressed classes and three to factory labour.

(*c*) *Extension of the rural franchise in the Punjab.*—We suggest that the question should be further examined.

(*d*) *Woman's franchise.*—We recommend that women should be enfranchised by rules in every province and also should have a right to stand for election.

(5) *Seats in Provincial and Central Legislatures.*—We are in favour of their being increased so as to secure adequate representation of all classes and interests.

(6) *Special Constituencies.*—In our opinion, the aim should be to encourage territorial electorates and not to extend the principle of special electorates. As regards the question of the readjustment of special electorates raised by several witnesses, we have no objection to this being done in the light of local conditions.

(7) *Communal representation.*—We have already expressed our views on this subject. In our opinion the abolition of communal electorates is at present out of question, but we are entirely opposed to the extension of the principle any further.

(8) *Plural Constituencies.*—Upon the material before us, we are unable to make any specific recommendation. Dr. Paranjpye, however, records the following opinion :—

" Single member constituencies tend to give an exaggerated importance to the dominant sections and minorities are apt to be overlooked and left without any representation at all. Modern opinion is in favour of multi-members' constituencies and proportional representation either by means of single transferable vote or at least by means of a cumulative vote, though in the present condition of India with insufficient means of communication and the absence of highly educated electorates, it may not be possible to have a very large constituency, still I am opposed to any move in the opposite direction. Only large constituencies returning many members each are likely to give adequate and reasonable representation to all sections and parties in the country."

(9) *The official bloc.*—We are opposed to its retention on principle. It mainly serves the purpose of adding to the voting strength of the government in the Legislature.

(10) Miscellaneous suggestions regarding elections, election offences, and the like (paragraph 61) ; the treatment as non-officials of the President, Deputy President and Council Secretaries (paragraph 62) ; Recommendations regarding questions and Resolutions (paragraphs 64 and 65) ; Formal motions and other motions (paragraphs 66 and 67) ; Miscellaneous suggestions regarding legislations (paragraph 73).

We have no objections to the recommendations of the majority regarding the above.

(11) As regards previous sanction to provincial legislation (paragraphs 68 and 69) or the operation of previous sanctions under section 80 (*c*) on the reservation of provincial legislation (paragraph 71) we have no objection to the recommendations of the majority.

(12) As regards the return to new Councils of bills for reconsideration in whole or in part, upon the question raised by the Madras Government, we think that the law should be made more clear, as in our opinion it is not free from doubt.

(13) As regards powers of restoration (paragraph 74) we do not agree with the view of the Bombay Government that the powers to certify expenditure in regard to transferred subjects should be vested in the Governor in Council instead of in the Governor or that the Governor General in Council should be substituted for the Governor General in the provisions which relate to

the powers to decide in cases of doubt whether expenditure is required to be submitted to the vote of the Council.

(14) We have no objection to the recommendation of the majority . . . the view of the Bengal Government that the power to authorise expenditure in relation to transferred subjects should be extended in certain specified cases. Nor do we agree with Sir P. C. Mitter's suggestion based on the Japanese Constitution that the Governor or the Governor General, as the case may be, in lieu of the existing provisions may authorise expenditure which has not been granted to the extent of the total amount of the previous year's budget and in the case of the Legislative Assembly to five per centum above the amount of the previous year's budget.

(15) As regards the recommendation of the majority that the conflict between section 72D and the Legislative rules should be removed so as to provide in the latter that motions may be moved at the stage of voting on the whole grant to reduce that grant or to omit or to reduce certain terms in that grant we have no objection.

(16) As regards the question of the life of the Councils, two of our colleagues, Sir Sivaswamy Aiyer and Dr. Paranjpye, consider that the period should be extended to at least four years while the remaining two Sir Tej Bahadur Sapru and Mr. Jinnah prefer the present period of three years.

(17) As regards questions relating to joint deliberations between the two halves of the Government which we have discussed at length at a previous stage, we have no objection to the recommendation of the majority (paragraph 82) for the framing of a definite rule under the Act which would replace the Convention emphasised by the Joint Select Committee.

(18) As regards the question of joint responsibility of the Ministers (paragraph 84) we suggest that section 52 (3) itself should be modified so as to secure this end. We would not leave it to the growth of a convention on the subject. We desire to say that the Cabinet system with a Chief Minister should be definitely provided for. It has been tried successfully in Madras and we do not agree with the suggestion of the majority that the difficulties in the way of establishing joint responsibility in India are great and that they are enhanced where the two main communities, Hindu and Mohammedan are keenly divided in a local Council. We think that in every Council there are at least a certain number of Hindus and Mahommedans who share common political aims and ideals and we believe that the enforcement of the principle of joint responsibility will promote common political action and help to strengthen political parties in Councils and outside.

(19) As regards the recommendation of the majority in regard to Council Secretaries, we have no objection.

(20) As regards the recommendations of the majority in regard to the Finance Department, or the Finance Member or on the question of the joint *versus* separate purse or the appointment of the joint Financial Secretary (paragraphs 92-98) we have already discussed them at length in a preceding chapter and we do not wish to express any further opinion.

(21) As regards the recommendation of the majority in regard to reappropriation (paragraph 99), or the recommendation with regard to concession, grant or lease of mineral or forest rights we have no [illegible] (paragraph 100).

(22) As regards the recommendation of the Joint Select Committee with regard to the borrowing powers of the local governments, under the local governments' borrowing rules we have no objection to the amendment of section 20, sub-section (2) of the Act so as to define clearly the meaning of the expression "Government of India" which has been interpreted in judicial decisions in a very restricted sense.

(23) As regards the recommendations of the majority in regard to the separation of provincial balances and of accounts from audit, we have no objection.

(24) As regards European commercial representation in the Legislative Assembly we have no objection to the recommendations of the majority.

(25) As regards the recommendation of the majority with regard to the changing of the date of the beginning of the Railway year to the first of August and of placing the Railway estimates before the Assembly in the middle of September we are unable to make any recommendation as it requires further examination.

(26) *Control of the Secretary of State in Council over transferred subjects.*—We have discussed the constitutional position at length with reference to section 19A at an earlier stage. We do not think that the regulation and restriction of the exercise of his powers of superintendence, direction and control under section 19A can at all amount to a divestment of control. As to how far he can further relax his control consistent with his statutory obligations under the present Act is a question which has not been discussed by the majority and we think that no real relaxation of such control in any greater degree is possible under the present Constitution over the transferred subjects (paragraph 107).

(27) As regards Control of the Secretary of State in Council over central and provincial reserved subjects, we think that consistently with his responsibility to Parliament any divestment of such control is out of question, and any relaxation of it by definite delegations of powers by rule must be of a very limited character. We note that the majority are of opinion that the step which, in

their opinion, should be taken is to work towards establishing a practice in conformity with the position taken by the joint Committee that control in cases affecting purely Indian interests should not be exercised. We venture to doubt whether such a convention would be of any permanent value or could effectively put a stop to the powers of control, particularly when it is realised that it is extremely difficult to define the expression "purely Indian interests". Bearing in mind the present Indian Constitution we do not feel justified in building much hope on such a convention.

(28) As regards the rules of executive business we have no objection to the first recommendation of the majority that where this is not already the case a rule may be made providing that a Member or a Minister may recommend to the Governor that a case in his own department should be considered before the joint Cabinet or before that side of the government which is directly concerned in it. As regards the second recommendation that a rule should be framed requiring the Secretary in the department to inform his minister, in regard to the action proposed in a particular case, of his intention to refer it to the governor, we have no objection. As regards the question of direct access of the Secretary or the head of a transferred department to the governor we do not think that it is parallel to such right of access in the case of a Secretary or head of department on the reserved side. In the former case the Minister is responsible to the Legislature; in the latter, the member in charge of a portfolio on the reserved side of the government owes no such responsibility.

(29) *Rules of Executive Business.*—As regards the recommendation that the government should interview each of the Ministers on a special day each week, we have no objection if it is found to be practicable.

(30) As regards the majority's recommendations that members of the Legislatures in India should be exempt from sitting as jurors or assessors and from liability to arrest or imprisonment for civil causes during the sessions of the Legislatures and for periods of a week immediately preceding and following actual meetings we have no objection. Nor do we object to their further recommendations that the influencing of votes of members of Legislatures by bribery, intimidation and the like should be penalised under the ordinary law or that Civil Courts should have no power to intervene for the purpose of preventing a President from putting certain motion to the Council or that section 110 of the Government of India Act be so amended as to secure immunity to the Governor-General, Governors and their Members of Executive Councils from the jurisdiction of all the Civil Courts and not merely from the original jurisdiction of the High Court.

(31) *Qualifications of candidates.*—While we think it would be better in principle to secure candidates who, if elected, will be able to take an intelligent part in the deliberations of the Councils, there are great practical difficulties in the matter of laying down definite qualifications. We are, therefore, unable to make definite recommendations.

(32) *Disqualifications of candidates.*—It is recommended that a sentence of six months which constitutes a bar to election should be increased to one year. We have no objection.

(33) *Residential qualifications.*—We are opposed to their retention.

(34) *Appointment of Nominated Members.*—We entirely disapprove the principle of nomination of non-officials except for specified minorities in whose case it is difficult to constitute electorates.

Social legislation.

As regards the recommendations of the majority in paragraph 120 of their Report, we have considered their recommendations. While we appreciate the importance of the subject we feel that under the present Constitution section 67 (2) provides a sufficient safeguard against any hasty or ill-advised measure affecting the religion or religious rites and usages of any class of British subjects in India. We recognise that, having regard to the conditions in India, it is not easy at all times to draw a sharp line between social and religious usages. While we understand the spirit of caution which has led the majority of our colleagues to recommend the appointment of standing committees of the Legislature for social legislation, we do not feel ourselves justified in committing ourselves, more particularly because we think the subject has not been sifted in the manner in which it might have been. We think that the importance of the subject should be borne in mind when the Constitution is revised and the Legislatures are made truly responsible.

CHAPTER XI.

VIEWS OF INDIAN MEMBERS OF PROVINCIAL GOVERNMENTS.

We have already referred to the demands for further advance made by the Legislative Assembly almost from the very commencement of the Reforms. We now propose briefly to indicate, as far as possible, in their own words the views of the Indian Members of the Provincial Executive Councils and Ministers, many of whom have held office from the beginning of the new era. We attach considerable importance to their opinions as being those of men who have acquired administrative experience and knowledge of the working of the system. We do not overlook the fact that the Governor-in-Council of the various Provinces have generally taken a different view.

Madras.

The Hon'ble the Raja of Panagal, observes in his letter, dated 16th July 1923: "What the ten years' period was expected to teach the three years' period has taught. Knowing as we do that the transitional stage aimed at by the Act is attended with serious risks, it is no use keeping to that stage . . . . . Going back to the old form of Government is out of the question. The only course open is to advance forward." He recommends the transfer of all subjects to popular control, . . certain residuary powers being vested in the Governor in regard to law and order and finance.

The Hon'ble Sir A. P. Patro, also a Minister in Madras, makes the same recommendation but qualifies the residuary powers to mean those similar to the powers vested in the President of the United States. In his letter dated the 12th June 1924, he observes:—"It has become increasingly difficult to continue the unity of Government as the Legislative Council now feels disappointed that the co-operation with the Government has not yet resulted in any progressive measure of responsibility. The experience of the past three years shows the necessity for a thorough readjustment and the transfer of subjects."

Sir K. V. Reddy, Minister in Madras during 1921-1923 says in his letter dated 6th August 1924:—"It is admitted on all hands that Dyarchy has failed. Even in the province of Madras where an honest attempt has been made to work the Reforms in the spirit in which they were conceived, Dyarchy has absolutely failed. . . . . The only remedy I can think of for the above defects is complete Provincial autonomy." While pleading for complete provincial autonomy, he urges that it is essential to have a re-distribution of the provinces on a linguistic basis.

Bombay.

The Honourable Messrs. Chunilal V. Mehta and Cawasjee Jehangir, Members of the Executive Council in Bombay, observe in a Joint Note, dated 4th July 1924:—"We are of the opinion that no palliatives will be of any effect and that the creation of an authority to control the Government in the shape of a responsible elected council to take the place of the control of exercise by the Secretary of State and ultimately by Parliament can only be achieved by full responsibility in the provinces. We therefore think that a Royal Commission should at once be appointed for this purpose. In conjunction with the establishment of full responsibility in the provinces, certain questions arise which can be considered by the Commission. The relations of the Provincial to the Central Government will have to be fixed. . . The main object of the reforms was to secure that the country should be governed with greater regard to the Indian point of view; but this purpose has not been achieved."

The Hon'ble Messrs. Ghulam Hussain Hidayatulla, B. V. Jadhav and Ali Muhammad Khan Dehlavi, Ministers in Bombay, endorse the above suggestions.

Sir Chimanlal Setalvad, *ex*-Member of the Executive Council in Bombay, states in his Memorandum:—"The only way to restore confidence and to ensure the smooth working of the Constitution is to take a courageous and bold step and to give provincial autonomy, in the beginning in the major provinces, making all subjects transferred and placing them in the hands of Ministers with joint responsibility. . . . In my view, mere alterations and amendments in the rules and regulations under the Government of India Act will not meet the necessities of the situation." After indicating that an element of responsibility should be introduced in the Central Government with certain reservations as regards foreign relations, defence and law and order, Sir Chimanlal Setalvad concludes:—"A consideration of making an advance on the lines indicated above should, I venture to think, be immediately undertaken."

United Provinces.

The Honourable the Raja of Mahmudabad, Home Member, United Provinces Government, observes in his Minute of Dissent appended to the Report of the Local Government:—"It will, I am sure, be a mistake to wait any longer and not to set the Government machinery right at once with a view to satisfy the people and secure a better method of administration in the interests of Government as well as of the people. . . . Dyarchy should go and the Government in future should consist of Ministers only." He concludes: "I would once more insist with all the force at my command, that nothing short of amending the present Act will satisfy the aspirations of people of all shades of opinion."

The Hon'ble Messrs. Nawab Lieut. Ahmad Said Ali and Rajeshwar Bali, Ministers in the United Provinces, in a Joint Note, dated the 20th June 1924, observe :—" We are of opinion that no advance is possible in the Central Government without amending the Constitution. We consider such an advance essential for the realisation of self-government within a reasonable period of time ". Regarding the provinces, they say " Here we speak with first hand knowledge of the working of the Constitution. We are of opinion that in these provinces the system of Dyarchy should be brought to an end and full provincial autonomy conceded. We base our conclusions partly on the extreme difficulties of working the system and partly on the results so far achieved in spite of an admittedly defective Constitution.

Mr. Chintamani, *ex*-Minister in the United Provinces, after stating " as the system is admittedly transitory and has proved to be unworkable without grave misunderstandings and frequent friction and unpleasantness which are detrimental to efficient administration and good government, there is no point in leaving it wholly or very much as it is because ten years have not elapsed since it was brought into being" recommends that "Provincial Governments should be transferred into fully responsible Governments" He also suggests the introduction of responsibility into the Central Government subject to certain reservations as regards defence and foreign and political affairs.

Bihar and Orissa.

The Hon'ble Mr. Sachidananda Sinha, Finance Member in Bihar and Orissa Government, in his Note dated the 18th July 1924, remarks, " India has started on the road to responsible Government, there is no half-way house in the Provincial Governments, between the old system now superseded and full provincial autonomy—that is, a constitutional Governor and a responsible Ministry...Claiming to be in intimate touch with these large, important and influential sections throughout Bihar, I can unhesitatingly declare that there is even in the ranks of these classes (referring to large and stable elements in the population who are still sincerely loyal to the British connection and not oblivious of the good that has resulted from it in the past) a deep dissatisfaction with the system of dyarchy and a complete distrust of any advantages likely to accrue from it." He concludes : " I have no alternative but to suggest that the present system in the provinces be superseded by the establishment of complete provincial autonomy which alone seems to be the true solution of the difficulty ".

The Hon'ble Sir Fakhr-ud-Din and Mr. Ganesh Dutt Singh, Ministers, in a Joint Note, after referring to the practical difficulties of working Dyarchy, suggest " As far as the inherent defects are

concerned, the remedy lies in changing the whole system. According to popular opinion, Dyarchy is doomed and it is not possible to work it successfully ".

Central Provinces.

The Hon'ble Sir M. V. Joshi, a Member of the Executive Council, concludes his Minute of Dissent to the Report of the Central Provinces Government, thus :—" One thing is clear that Dyarchy as a working experiment neither had nor can have a fair trial. Full provincial autonomy might be attended by some risks, but it would be a right test for deciding whether parliamentary forms can be properly worked in the interests of the people at large. The Constitution might have been safeguarded by retention of larger powers to the Governor under defined limitations and this can be done even now. For these reasons, I consider that all provincial subjects should be transferred ".

Mr. S. M. Chitnavis, in his Note submitted to the Committee, says : " Dyarchy is perhaps a clumsy weapon for forging a system of complete self-Government....Not only is complete provincial autonomy essential for progressive Government as well as for administrative efficiency, but even this will not be of full avail without the Central Government being made responsible to the Legislature and being freed of outside control in all matters of internal administration ".

Rao Bahadur Kelkar, *ex*-Minister, concludes his Note submitted to the Committee in the following words :—" These are some of the defects which I have noticed in the practical working of Dyarchy. There is not merely a division of authority, but there is a division of allegiance on the part of the Service to different halves of the Government. If all subjects are made transferred, these defects or difficulties would be greatly minimised ".

Bengal.

Sir Surendra Nath Banerjea, in his Note, dated 8th October 1924, makes the following observations :—

" The real difficulty about Dyarchy is that it depends upon the uncertainties of the personal element, which may vary in the different provinces and in the same province from time to time, and that no rules and no hard and fast conventions can afford adequate protection. Dyarchy should go as quickly as possible, not because it has been a failure everywhere, but because public opinion apparently does not want it." But he adds that full provincial autonomy should be accompanied by certain necessary safeguards which must be thought out and recommended by a Parliamentary Commission. He also urges the introduction of responsibility in the Central Government.

Sir P. C. Mitter in his note submitted to the Committee remarks: "Soon after joining Government I realised that the system was unsatisfactory and unworkable. But apart from the inherent defects of Dyarchy its failure to fulfil the expectations of the people has made it so unpopular that it can no longer be run as a democratic institution. This failure is due as much to its inherent defects as to the financial difficulties under which it had to work in all provinces and especially in Bengal. If those financial difficulties be removed in future and if other defects be remedied, even then it cannot be successfully worked any more as a democratic institution".

We recognise that the Hon'ble Sir Abdur Rahim and Messrs. A. K. Fazlul Huq and A. K. Ghuznavi take a different view.

Punjab.

The Hon'ble Sirdar Sundar Singh Majithia, Member of the Executive Council in the Punjab, suggests in his letter, dated 21st May 1924: "If the eventual goal of self-Government and Provincial autonomy has to be achieved, it is desirable that a larger number of reserved subjects should be transferred and their administration placed under the charge of the elected representatives of the people in the person of Ministers appointed from the Members of the Legislative Council." He criticises the dual system of Government "as having to some extent stood in the way of united action. It has not brought about the development of the party form of Government or the sense of responsibility to the Legislature". It seems to us obvious from the list of subjects which he recommends should be reserved such as the nomination of members, control of Cinematographs and public entertainments and other subjects of minor significance that he was endeavouring to keep [illegible] within the terms of reference.

The Hon'ble Messrs. Fazl-i-Hussain and Choudhri Lal Chand (the latter had lately to resign office) in a Joint Note, dated the 1st May 1924, recommend the transfer of all subjects in the provinces except the nomination of members, because Dyarchy prevents, in their opinion, "(*a*) the creation of a united Government, (*b*) the development of the party form of Government, and (*c*) the developing of a sense of responsibility in the Legislature". They also suggest that a certain amount of responsibility should be introduced in the Central Government.

Assam.

The Hon'ble Mr. Promod Chandra Dutta, Minister in Assam, in his letter of the 19th May 1924, refers to Dyarchy in the following terms, "that Dyarchy is unpopular is beyond dispute. Few have a good word for it now. . . . To me it seems that in the present temper of the people nothing short of full responsible Government in the provinces or at least

a sure prospect of its early attainment will placate them. Such a demand is being voiced from all platforms. Their methods are indeed different, but the objective is the same—call them Moderates, Liberals, Swarajists or Congressmen." Concluding he observes: "It seems to me that whether Dyarchy is to be retained or abolished is a question which has to be decided for all the provinces together."

The Hon'ble Syed Muhammad Saadulla, Minister in Assam, in his note dated 15th May 1924, remarks "The position of Ministers under the present system is one of great delicacy and difficulty. The Minister is to be appointed by the Governor and dismissed by him, but his pay is to be fixed by the Legislative Council. Therefore he seems to be under two cross fires and must please both his masters, the Governor and the Council. To add to this embarrassment there is the convention that he cannot betray the Government and speak out his mind in the open Council even on subjects in connection with which he has differed from the opinion of the majority of the Government." In a later paragraph he expresses the opinion "so long as the constitution remains a dual one, there will be vigorous criticism of the present system. If any advance is to be made in the present constitution, there ought to be only one form of Government, that is the Governor and Ministers alone and all subjects should be treated alike." He is willing, however, to concede that one of the Ministers may be a Government officer elected or selected from among the official members of the Legislature.

We would draw attention to the following statement contained in the letter of the Assam Government, dated the 1st July 1924 :—

> "The general attitude of the Council in regard to the present political situation is well illustrated in the debate on the introduction of responsible Government in Assam. The resolution on the subject requested the Secretary of State and the Governor in Council to take such immediate steps as may be necessary in order to establish full responsible Government in Assam. Of the members who supported the resolution, some took it in its literal sense, while others interpreted it as meaning that full responsible Government should be established as early as practicable, but a wide spread dislike of dyarchy and a general desire to support the resolution were evident, and it was eventually carried by a majority which included all the Indian non-official Members of the Council except three nominated members."

We would also draw attention to the following statement contained in the letter of the Assam Government dated the 1st July 1924 :—

" The general attitude of the Council in regard to the present political situation is well illustrated in the debate on the introduction of responsible Government in Assam. The resolution on the subject requested the Secretary of State and the Governor in Council to take such immediate steps as may be necessary in order to establish full responsible Government in Assam. Of the members who supported the resolution, some took it in its literal sense, while others interpreted it as meaning that full responsible Government should be established as early as practicable, but a wide spread dislike of dyarchy and a general desire to support the resolution were evident, and it was eventually carried by a [illegible] which included all the Indian non-official Members of the Council except three nominated members."

Burma.

The Hon'ble Messrs. J. A. Maung Gyee and U. Maung Gyee, Ministers in Burma, recommend the provincialisation of Central subjects and the transfer of all subjects to popular control. The Governor in Council in Burma in his letter of the 11th of July 1924 while not agreeing with either of these recommendations suggests that any subject which may be transferred in any province in India should, unless there is any clear reason to the contrary, be made a transferred subject in Burma as well.

CHAPTER XII.

CONCLUSION.

Having expressed our views in detail on the working of the present system, its inherent constitutional defects and the practical difficulties experienced in its working, we shall now briefly submit our conclusions. While we agree with the majority that the constitution, as a whole, requires to be worked by reasonable men in a reasonable spirit if dead-locks are not to ensue, we venture to think that this will hold good in the case of any other constitution. In our opinion, the system of Dyarchy was during the first three years everywhere worked in the Legislatures by men most of whom were professedly its friends and who generally [illegible] tried to work it in that spirit of reasonableness which is [illegible] to by the majority of our colleagues, and it is no exaggeration to say—indeed this is also the testimony of several local Governments which we have quoted above,—that generally a spirit of harmony and co-operation prevailed between the Legislature and the Executive, notwithstanding the fact that the atmosphere outside was for sometime markedly unfavourable. The Indian Ministers and Members of Executive Councils also, upon whom new opportunities of service were conferred, appear to us to have been within the sphere of their Executive duties, equally eager to work the Constitution in the same spirit of reasonableness, and yet differing from the majority of our [illegible] we have been forced to the conclusion that the present system has failed and in our opinion it is incapable of yielding better results in future. The system has been severely tested during the course of this year and its practical breakdown in two provinces, *viz.*, Bengal and the Central Provinces as a result of the opinions of the majority of the members of the Councils of those two provinces who refuse to believe in the efficacy of Dyarchy and the tension prevailing in the other Legislatures for similar reasons, point to the conclusion that the constitution requires being overhauled. It has failed in our opinion for several reasons: (1) There are the inherent defects of the constitution which though theoretically obvious at its inception have now been clearly shown by actual experience to exist. (2) The Ministers position has not been one of real responsibility. (3) While in a few provinces the practice of effective joint deliberation between the two halves of the Government has been followed, in several of them it has not been. (4) Excepting to a partial extent in Madras, almost everywhere else the Ministers have been dealt with individually by Governors and not on the footing of collective responsibility. (5) The close inter-connection between the subjects of administration which have been divided into 'reserved' and 'transferred' has made it extremely difficult for Legislatures at times to make in practice a distinction between the two sections

of the Government with the result that the policy and administration of the Reserved half of the Government have not infrequently been potent factors in determining the attitude of the Legislatures towards the Ministers and have also in our opinion prejudiced the growth and strength of parties in the Councils. (6) The Meston Award has crippled the resources of the provinces. It has been the corner stone of the entire Financial system, and it has prevented Ministers from developing nation-building Departments to the extent which would have enabled them to produce any substantial results. (7) The defects of the Rules which we have noticed before and the constitution and the working of the Finance Departments have put a severe strain on the system.

The Central Government.

The criticism which the Montagu-Chelmsford Report made of the Congress League Scheme has been demonstrated to be true in actual experience of the defects of having an irremoveable Executive with an elected majority in the Legislature as is the case in the Legislative Assembly under the present Constitution: "An Executive which is independent of its Legislature " says the Report " as the Indian Executives have hitherto been can carry on the Government in virtue of authority derived from without; a party Executive can govern because it interprets the will of the people as represented by the Assembly, but wherever, as in Canada or Malta, attempts have been made to set up an irremoveable Executive and a popular Assembly, acute conflict has ensued and has resulted either in advance to popular government or a return to autocracy". It is scarcely necessary to point out that since the above passage was written, responsible government has been introduced in Malta with certain reservations relating to matters of Imperial interests.

We think that the Bihar Government has correctly summed up the position in the provinces by saying that Dyarchy is working 'creakily' and 'minor remedies may cure a creak or two.' We have examined in detail the sections of the Government of India Act and the Rules made thereunder with a view to see how far "creaks' discovered can be 'cured.' We are satisfied that this process, though it may lead to some improvement of the administrative machinery in some respects, will not produce any substantial results. We do not think that the suggested amendments if effected will afford 'valuable training towards responsible government' or will provide any solution of the difficulties which we have discussed in our chapter on political conditions, or that they will strengthen the position of the Provincial Governments, in relation to their Legislatures or that of the Central Government in relation to the Assembly. The majority of our colleagues say that no alternative transitional system has been placed before us. We think that no such alternative transitional system can be devised

which can satisfactorily solve the administrative or political difficulties which have been brought to our notice. To our mind the proper question to ask is not whether any *alternative transitional* system can be devised but whether the constitution should not be put on a permanent basis, with provisions for automatic progress in the future so as to secure stability in the government and willing co-operation of the people. We can only express the hope that a serious attempt may be made at an early date to solve the question. That this attempt should be made—whether by the appointment of a Royal Commission with freer terms of reference and larger scope of enquiry than ours or by any other agency—is a question which we earnestly commend to the notice of the Government.

We have the honour to be,

Your Excellency's most obedient servants,

SIR TEJ BAHADUR SAPRU.

SIR P. S. SIVASWAMY AIYER.

M. A. JINNAH.

DR. R. P. PARANJPYE.

Delhi, 3rd December 1924.

DELHI
GOVERNMENT OF INDIA PRESS
1925